



Open Government





Open Government

PRESENTED TO PARLIAMENT BY THE
CHANCELLOR OF THE DUCHY OF LANCASTER
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CHAPTER 1

INTRODUCTION AND SUMMARY

1.1 Open government is part of an effective democracy. Citizens must have adequate access to the information and analysis on which government business is based. Ministers and public servants have a duty to explain their policies, decisions and actions to the public. Governments need, however, to keep some secrets, and have a duty to protect the proper privacy of those with whom they deal.

1.2 The Prime Minister last year invited the Chancellor of the Duchy of Lancaster to identify areas of excessive secrecy in government and to propose ways of increasing openness. This White Paper presents the conclusions of that review.

PROGRESS SO FAR: CHAPTER 2

1.3 The amount and quality of information available to Parliament and the public has increased greatly in recent years. This White Paper builds on the Government's commitment to make government in the United Kingdom more open and accountable. The steps already taken are summarised in Chapter 2. At their heart is much greater transparency in the aims, performance and delivery of government services under the Citizen's Charter.

1.4 Greater openness under the Citizen's Charter is already leading to better service for the citizen. The Charter is providing everyone with much more essential information about the services that most affect their lives - hospitals, schools, police forces, local authorities. It has established the principle that performance standards must be published and performance against them openly accounted for. It is making it possible for parents, passengers and patients to compare the standards of their local services with those of others. It is providing a new stimulus to competition, choice and service improvement. The results of the process are already being seen - for example in reduced waiting lists and prompter payment of benefits.

1.5 There have also been other major innovations. They include improvements in the provision of financial and budgetary information and information about the public expenditure process; league tables of performance under the Citizen's Charter; and access rights, for example to personal information held on computer. Not only has more information been made available, it has already been put to use to ensure that

information sharpens accountability, makes objectives, targets and performance clearer and helps in the assessment and discussion of policies. Progress in all these areas will continue.

1.6 Even in what had previously been the most closed areas of government, progress can be made. So in May 1992, for the first time, the Prime Minister published *Questions of Procedure for Ministers* and the composition, terms of reference and membership of the Ministerial Cabinet Committees at the heart of the decision-making process. He acknowledged formally the continuing existence of the Secret Intelligence Service, and promised legislation to put the SIS and GCHQ on a statutory footing.

THE GOVERNMENT'S APPROACH

1.7 Three themes run throughout the Government's approach in this White Paper:

- handling information in a way which promotes informed policy-making and debate, and efficient service delivery;
- providing timely and accessible information to the citizen to explain the Government's policies, actions and decisions; and
- restricting access to information only where there are good reasons for doing so.

1.8 The Government believes that by embodying these themes in a series of practical steps the principal objectives of those who have sought a full statutory freedom of information regime can be met without the legal complexities such regimes entail.

LIMITS TO OPENNESS: CHAPTER 3

1.9 There must be limits to any commitment to openness. National security and defence, public safety and public order, law enforcement and legal processes must not be undermined, and the privacy of personal and commercially confidential information must be protected. Confidentiality is sometimes necessary to ensure the effectiveness of government decision-making. Internal policy advice and discussion, sensitive economic management decisions, the conduct of international relations - all involve protection of the confidentiality of information in the public interest. Chapter 3 outlines these areas of necessary confidentiality.

A NEW CODE OF PRACTICE: CHAPTER 4 AND ANNEX A

1.10 In this White Paper the Government sets out a positive new approach - a clear statement of principle as to what information should be available and what may properly be kept confidential in the public interest. This approach should lead to the elimination of inconsistencies and pockets of unjustifiable secrecy.

1.11 The Government proposes a new Code of Practice on access to information, setting out the circumstances in which government will volunteer information and those in which it will produce information on request. Chapter 4 describes such a Code of Practice and a draft is set out for consultation in Annex A. The aim is to introduce the Code from April 1994. The Government believes that similar codes should be introduced for the National Health Service (NHS) and local authorities, and will consult the NHS and the local authority associations with a view to publishing further proposals.

THE ROLE OF THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION

1.12 The Parliamentary Commissioner for Administration (PCA), the Parliamentary Ombudsman, has agreed that complaints that departments and other bodies within his jurisdiction have failed to comply with this Code can be investigated if referred to him by a Member of Parliament. When he decides to investigate he will have access to the department's internal papers and will be able in future to report to Parliament when he finds that information has been improperly withheld. The Select Committee on the PCA will then be able to call departments and Ministers to account for failure to supply information in accordance with the Code, as they can now call them to account for maladministration or injustice.

1.13 The Ombudsman has the confidence of Parliament and is independent of the Government. Parliamentary accountability will thus be preserved and enhanced. Ministers and departments will have a real spur to greater openness, and citizens will have an independent investigator working on their behalf.

TWO NEW STATUTORY ACCESS RIGHTS - TO PERSONAL RECORDS AND TO HEALTH AND SAFETY INFORMATION: CHAPTERS 5 AND 6

1.14 The Government sees value in statutory access rights in certain specific circumstances where the rights of individuals are directly involved, for

example when the accuracy and privacy of personal information held by government needs to be assured. Access rights may also be appropriate in areas of vital public interest where the rights of those seeking information and the rights of those outside government who have provided it need to be carefully balanced.

1.15 The White Paper proposes two new statutory rights of access to information. These are:

- a right for people to see personal information held about them by a wide range of public authorities, which is further described in Chapter 5; and
- a right of access to health and safety information, described in Chapter 6.

COSTS AND CHARGES: CHAPTER 7

1.16 The Government's thinking on costs and charges is described in Chapter 7. The Code of Practice sets new standards for producing information with major policy announcements and giving reasons with administrative decisions. This will increase the readily available information about government policies, actions and decisions. Where additional information is provided in response to individual requests, the Government believes that charges can reasonably be made to cover the costs of the work entailed.

REVIEW OF STATUTORY PROVISIONS: CHAPTER 8

1.17 A non-statutory code of practice cannot and should not override statutory bars to the release of information. Much legislation authorises the compulsory collection of information from individuals or private companies and, quite properly, unauthorised disclosure of such information has often been made a criminal offence.

1.18 Chapter 8 reassesses this area of the law. Some 200 prohibitions have been identified, and are listed at Annex B. The existing access right to environmental information overrides these provisions where they are too restrictive, and the proposed access right to health and safety information will follow a similar approach. There are strong arguments for leaving many of the remaining statutory restrictions unchanged. The associated criminal sanctions have proved an effective protection against disclosure of

confidential and private information held by the state. Chapter 8 describes the case for introducing harm tests into this area of the criminal law, in line with the approach in the Official Secrets Act 1989.

PUBLIC RECORDS: CHAPTER 9

1.19 The need for confidentiality diminishes with time as sensitivity reduces. Yet, until now, many files have remained closed for longer than thirty years, the standard interval before public records are opened to the public in the UK and in many other countries. We do not propose to change the thirty year rule. However, Chapter 9 sets out proposals for reducing the amount of material subject to retention beyond thirty years. Only those records which fall within exacting new criteria will be withheld in future.

CONCLUSION

1.20 In addition to the continued provision of information on targets and performance under the Citizen's Charter the Government's proposals involve:

- (i) a new Code of Practice on access to information held by central government and public bodies, and consultation on the introduction of similar codes for the National Health Service and local authorities;
- (ii) a role for the Parliamentary Ombudsman in investigating complaints that departments have not complied with the Code;
- (iii) a statutory right for people to see government information relating to them;
- (iv) a statutory right of access to health and safety information;
- (v) selective introduction of 'harm tests' into the criminal provisions covering unauthorised disclosure of information entrusted to government;
- (vi) a reduction in the number of public records withheld from release beyond thirty years.

1.21 The Citizen's Charter has already set in train a substantial change in the culture of government in the United Kingdom. The changes set out in this

White Paper will take that process further, extending citizens' rights to information and making that information more accessible.

Comments on the proposals in this White Paper, and on the draft Code of Practice at Annex A, should be sent by 15 October 1993 to:

Mr Stephen Ward
Room 421
Cabinet Office
Office of Public Service and Science
70 Whitehall
London SW1A 2AS

Unless confidentiality is requested, it will be assumed that responses can be made available to others on request.

CHAPTER 2

THE GOVERNMENT'S RECORD

2.1 The Government believes that people should have the freedom to make their own choices on the important matters which affect their lives. Information is a condition of choice and provides a measure of quality. Even where there is little effective alternative to a public service, information enables citizens to demand the quality of service they are entitled to expect and puts pressure on those running services to deliver high standards.

2.2 The provision of full, accurate information in plain language about public services, what they cost, who is in charge and what standards they offer is a fundamental principle of the Citizen's Charter. It has led to new developments across the whole range of service delivery.

2.3 This approach informs the Government's efforts to let people know how well their local schools are performing; how the trains are running or how long they should expect to wait for hospital treatment. In these and many other areas, public services appeared for too long to be shrouded in unnecessary secrecy. The Government is now giving the public - often for the first time - the information they need.

THE HEALTH SERVICE

2.4 For NHS patients, the Government's reforms have meant that there is now far more information about the services provided by hospitals and through GPs. Since June 1992, a range of waiting time figures has been published quarterly. For the year ending March 1993, and in succeeding years, health authorities are producing reports on the performance of individual hospitals and ambulance services as part of the Patient's Charter.

2.5 In Scotland, Health Boards will prepare annual reports for 1992-93 onwards which set out their performance against commitments contained in their local Charters, Local Health Strategies and contracts for health care services. At the same time, NHS trusts and directly managed units will publish annual reports on their performance as providers of services. Since March 1992 waiting-time figures have been published quarterly.

2.6 Service agreements between NHS trusts and health authorities are open to public scrutiny and purchasers are increasingly involving Community Health Councils, local people and voluntary bodies in drawing up these plans - for example, through public meetings and opinion surveys. NHS trusts are

required to publish their strategic direction, business plans, annual report and accounts and are obliged to hold at least one public meeting each year.

BRITISH RAIL AND LONDON UNDERGROUND

2.7 British Rail now publishes four-weekly 'track record' reports on the efficiency and punctuality of its train services. Posters at every London Underground station show performance line by line against the targets for reliability and punctuality.

SCHOOLS

2.8 The *Education Reform Act 1988* laid the framework for greater openness about the records of individual pupils and for the transmission of information about the curriculum taught in schools and about the achievements of pupils, both individually and collectively.

2.9 The head teachers of maintained schools in England and Wales are now required to send parents an annual report containing: the National Curriculum statutory assessment results and any examination results, information on how these compare to those of other pupils of the same age in the school, the child's progress in all the National Curriculum subjects and other subjects and activities, the teacher's comments on general performance and an attendance record. Arrangements also have to be made for the parents to discuss the report with the school. Northern Ireland requirements are broadly similar except that the information provided does not include attendance records.

2.10 In Scotland new national guidelines on reporting were issued in December 1992. New pupils' report forms will, from 1993-94, give parents clear information about their child's performance over all the aspects of Scotland's 5-14 curriculum. This will include the results of appropriate national tests. Parents will have the opportunity to discuss the report with the school.

2.11 More generally, the publication of comparative tables of schools' examination results has provided information which was not previously available. This has helped parents to find out more about their local school and about other schools, especially when choosing schools for their children. This year the tables will include vocational as well as academic results, from colleges in the further education sector as well as schools. The Government intends to widen the scope of the tables over time to include attendance figures and schools' results in the National Curriculum assessments in England and Wales, and school costs in Scotland.

2.12 The Government has significantly enhanced parents' involvement in schools. Parents are now represented on all school governing bodies. Those governing bodies are required to prepare annual reports to parents on the operation of the school, including information on how the budget has been spent. They are also required to arrange annual parents' meetings at which the report and any other issues can be discussed.

OPEN DECISION-MAKING

2.13 When people deal with public services, they should be confident that decisions on benefits or other services are made fairly and according to clear rules. In order to achieve this, it is important that information is readily available on what people are entitled to, and the procedures and criteria the authority uses to make its decisions.

2.14 Many public services have already made progress in this direction:

- The Social Security Benefits Agency provides free telephone services to advise people on their entitlement to benefits, and publishes many of the codes and instructions which are used in evaluating applications.
- The Health Information Service helpline provides information about local Charter standards; NHS services and complaints procedures; common diseases, conditions and treatments and local voluntary organisations and self-help groups.
- In Scotland, the freephone NHS Helpline provides access to a comprehensive information service covering a wide range of issues from health education information to information on specific illnesses and patients' rights.
- The Inland Revenue produces a wide range of leaflets to explain various aspects of the tax system and provides advice through Tax Enquiry Centres. It has published a Code of Practice drawing together the procedures Inspectors are expected to follow when conducting investigations so that people can judge how they deal with them against the Code. And it has appointed an outside Adjudicator to give independent rulings when people are not satisfied that their tax affairs have been handled properly, and the Department itself has been unable to satisfy them.

- The Ministry of Agriculture, Fisheries and Food (MAFF) helpline provides a focus for outside telephone callers who are unfamiliar with the organisation of the department and the services it provides. There is also a Consumer Helpline to answer enquiries on food safety law and regulations.
- The Vehicle Inspectorate now publishes a range of maintenance standards in easy-to-use manuals to help vehicle owners prepare their vehicles for the annual MOT test.

2.15 It is important, of course, that explanations are clear and forms are easy to fill in. Many departments and agencies have made good progress in this direction and the Employment Service, Companies House, the Inland Revenue and the Lord Chancellor's Department have won Plain English awards. Information is also published in languages other than English so that it is accessible to all members of the community.

2.16 Many departments also consider the needs of the blind and partially-sighted in preparing their information, by making information available in braille or on tape, or by providing telephone helplines. This need not always involve separate publications. Even relatively simple adjustments to the presentation and printing of documents, such as those set out in guidelines prepared by the Royal National Institute for the Blind, can dramatically increase legibility for partially-sighted people.

AUDIT AND EXAMINATION

2.17 The establishment of the National Audit Office in 1983 provided an improved system for the examination and scrutiny of Government accounts. Where reports by the Comptroller and Auditor General have revealed shortcomings in the use of public money, these have been brought to public attention. These reports are taken seriously within Government and much of their value comes from the fact that they are published and widely discussed.

LOCAL GOVERNMENT

2.18 Increasing openness has also been encouraged at the local level. The *Local Government (Access to Information) Act 1985* enables access to local authority meetings as well as the relevant associated papers. This allows better informed community debate on the issues being considered by local authorities.

2.19 Local authorities in England and Wales now publish annual reports to tenants on standards of service and performance.

2.20 The Audit Commission's responsibilities for examining and scrutinising the accounts of local authorities and the Health Service in England and Wales have now been extended. Under the *Local Government Act 1992*, the Audit Commission has been charged with giving directions to local authorities on performance indicators on which they should report. The 1992 Act placed a similar responsibility on the Accounts Commission in relation to local authorities in Scotland.

2.21 In England and Wales the first directions have already been given for the current financial year. When the results become available at the end of 1994, the information collected will allow the production of valuable comparative data on the performance and efficiency of different local authorities, and will cover a wide range of functions. Auditors also now have new powers to issue *public interest reports* on particular aspects of their findings.

INSPECTIONS - ENSURING CONFIDENCE

2.22 The Government believes that independent scrutiny of public services will ensure that standards are maintained or improved. Under the Citizen's Charter, standards have been set for Inspectorates so that they represent the interests of users not the interests of the service providers. Inspectorates covering prisons, schools, social services, probation services, the police and fire services and magistrates courts have been examined against the following tests:

- Inspectors should be independent of the service they inspect, both managerially and financially, so that they can assess objectively the efficiency and effectiveness of the service provided against the standards set for it.
- People who are not professionally connected either with the Inspectorate or with the service itself should take part in inspections to represent the views and concerns of the general public.
- Reports should be published and made widely available so that people know how well or how poorly services are performing. Service providers whose work is inspected should publish and make widely available a response to the report.

2.23 The *Citizen's Charter First Report* (Cm 2101) set out the details of how Inspectorates are increasingly matching up to these ideals.

ENVIRONMENTAL INFORMATION

2.24 Recognising the importance of environmental issues, the Government has provided public rights of access to environmental information. The *Environmental Protection Act 1990* provides for public access to registers giving information about industrial processes which could cause significant pollution to air, land and water. A statutory right of access to environmental information, implementing a European Community Directive, came into force at the end of 1992 and supplements the rights already available on statutory public registers. The principle of providing wider public access to environmental information has been widely welcomed.

HEALTH AND SAFETY INFORMATION

2.25 In 1986 the Health and Safety Commission issued a statement on its policy of making information available to the public. Part of that policy was the establishment of public registers in its area offices giving details of, for example, convictions for breaches of health and safety legislation and notifications of premises subject to legislation dealing with significant risks. In accordance with a further statement made in 1991 on the Commission's policy on publishing reports on incidents, reports are now published where there is serious public concern following an incident, or where the incident gives rise to general or technical lessons which merit wide circulation.

FOOD SAFETY

2.26 The Ministry of Agriculture, Fisheries and Food together with the Department of Health set up a consumer panel in 1990 to provide direct dialogue with Ministers in which access to information has been regularly discussed. As a result, more information has been published on food safety and consumer protection issues and the workings of independent advisory committees have been made more open. In addition, evaluation reports on pesticides are now published, as well as regular reports on usage and on residue monitoring.

OFFICIAL STATISTICS

2.27 Official statistics contain a vast range of information about the economy and society. They are collected by government to inform debate, decision-making and research both within government and by the wider

community. They provide an objective perspective of the changes taking place in national life and allow comparisons between periods of time and geographical areas.

2.28 Vital as this is, open access to official statistics provides the citizen with more than a picture of society. It offers a window on the work and performance of government itself, showing the scale of government activity in every area of public policy and allowing the impact of government policies and actions to be assessed.

2.29 Reliable social and economic statistics are fundamental to the Citizen's Charter and to open government. It is the responsibility of government to provide them and to maintain public confidence in them.

2.30 Since the Central Statistical Office (CSO) became an agency it has announced certain improvements which mean that:

- all CSO statistics are now published as early as possible, with many being released much more quickly than before.
- CSO data are made available to all users at the same time, although Ministers, and where appropriate the Governor of the Bank of England, and some officials (on a strict need-to-know basis) receive copies of key statistical releases 1½ days in advance.
- the integrity of the statistics has been demonstrated by making it clear that the CSO is entirely responsible for the contents of its press releases, subject only to advance consultation with the Chancellor of the Exchequer or the Economic Secretary on changes in format.

2.31 Other departments, in consultation with the Head of the Government Statistical Service, are also introducing measures to help ensure the consistency of release practice for key official statistics.

THE WORKINGS OF GOVERNMENT

2.32 Since the last election, the Government has taken further steps to improve understanding of the operation of government. In May 1992, the Government announced the names and membership of the Ministerial Cabinet Committees, sub-committees and working groups. This information will be updated every six months, providing a more detailed map of the decision-making processes within Government.

2.33 Similarly, the publication of the guidance *Questions of Procedure for Ministers* will ensure that everybody is aware of the conventions and rules within which Ministers are expected to operate.

2.34 The effective scrutiny of Government by Parliament is central to our democracy. Information is crucial to this process. The extension of the Departmental Select Committee system in 1979 has led to a significant increase in the flow of information from the Executive to Parliament through Government memoranda and the examination of witnesses. There was concern when the Committees were established about the adequacy of their powers to secure evidence but, when the Committees submitted their assessments of the first ten years to the Parliamentary Procedure Committee's inquiry on the workings of the Select Committee system in 1989-90, the majority described the Government's attitude to Committees as helpful and cooperative and very few reported specific disagreements.¹

OPENNESS IN THE EUROPEAN COMMUNITY

2.35 The Government is committed to making the European Community's institutions more open. The Birmingham European Council in October 1992 emphasised the need for better informed public debate on the Community's activities. The Edinburgh European Council in December agreed a range of measures to support this. These include open debates on Presidency and Commission work programmes, on major community issues and on the first stage of legislative proposals; the publication of Council voting records whenever a formal vote is taken, and of most Council conclusions; better background briefing; better drafting of new Community legislation and improvement of the computer-based legal data system (CELEX) to make it more accessible to the public.

2.36 The European Commission has also adopted a number of measures to improve openness: producing its annual work programme in October, to allow wider public debate including in national parliaments; closer consultation with the Council on the annual legislative programme; wider consultation, including through green papers, before proposals are made; publication of all Commission documents in all Community languages and consolidation and codification of existing legislation.

2.37 The Commission has also recently completed a report (Com(93)258 final) on measures designed to encourage public access to the information available to the Community's institutions. The paper makes a number of points, including the need for better explanation of Single Market legislation

1. Second Report of the Select Committee on Procedure, Session 1989-90, para 153

and its rationale; the possibility of a round table meeting with regional and local authorities and non governmental organisations; the need for a more responsive and effective Commission information and press service; and a request to member states to improve openness at national level on the implementation of Community policies.

2.38 The paper suggests a number of principles which would underlie a policy on access to documents. These include the importance of an open relationship between the Community's institutions and its citizens and the need for action by all institutions (taking account of their different roles and working practices). The paper also addresses the issue of balancing increased openness against the protection of public and private interests and the continuing effective work of the institutions.

2.39 The recent Copenhagen European Council invited the Council of Ministers and the Commission to continue their work on access to information, with a view to having all necessary measures in place by the end of 1993.

ECONOMIC POLICY

2.40 The Government has recently set in place a number of innovations to make the formation of economic and monetary policy more transparent.

2.41 The Treasury model has been publicly available since the mid-1970s and there is a long tradition of Treasury economists publishing analytical work in the form of Working Papers.

2.42 The Treasury launched the *Treasury Bulletin* in 1990, to promote informed public debate on economic policy issues and enhance understanding of the Treasury's views.

2.43 The Academic Advisory Panel discusses economic research and analysis both by the Treasury and by outside economists, including research directly commissioned by the Treasury.

2.44 The Treasury has taken a number of steps to make the conduct of monetary policy more open, including the publication of the *Monthly Monetary Report*, statements setting out the reasons for interest rate changes and the Bank of England's quarterly *Inflation Report*.

2.45 The principle of open government also applies to the Government's management of the public finances. Comprehensive information is already

made available, including ready reckoners showing the yield of possible tax changes, the *Financial Statement and Budget Report* (which sets fiscal policy in a medium term context), the Autumn Statement, Estimates and departmental reports. In addition, technical tax changes are often preceded by consultative documents or through the publication of draft clauses for the Finance Bill. Later this year, the revenue and expenditure sides of the account are to be brought together for the first time when the Chancellor presents the first unified Budget.

2.46 However, Budget preparations must be conducted with a degree of confidentiality if the Government is to avoid anticipatory avoidance of proposed tax changes. This has not prevented extensive discussions of tax policy issues during the period leading up to the Budget (as well as in the rest of the year) in meetings between Treasury Ministers and officials from the two Revenue Departments and representative and other bodies. Although the Government has recently announced that the convention known as 'purdah', which had limited Ministers' public engagements in the months before the Budget, will not apply in future, it will still be necessary to treat Budget proposals in confidence.

BRINGING WIDER EXPERIENCE INTO WHITEHALL

2.47 The Government accepts that openness in Government means not only providing information about Government policies and activities but developing a culture of openness throughout the Civil Service. The aim is to ensure that there is a continual and refreshing interchange between the Civil Service and other organisations so that skills and experience can be shared. Departments are encouraged to build relationships with industry and commerce, local authorities and the charitable sector, in order to develop schemes for secondments and attachments in both directions. There were over 2,000 in 1992.

CONSULTATION

2.48 The Government believes in the value of consultation in developing policies. This is happening more frequently, for example in the preparation of the recent White Paper on Science, Engineering and Technology, when the Government invited suggestions and contributions from individuals and organisations, many of which have now been made available in the Library of the House of Commons and in the British Library. In the food safety area, the responses to nearly a hundred public consultation exercises a year are made available through departmental libraries.

FINANCIAL MANAGEMENT

2.49 The improvements in financial management systems which the Government has introduced into the Civil Service since 1979 have helped to make clearer the aims and objectives and clarified the costs of all parts of the public sector, leading to improved efficiency and substantial cost savings. The continuing series of reports by the Prime Minister's Advisers on Efficiency and Effectiveness have also contributed to this atmosphere in which constructive criticism and change is encouraged.

2.50 The Next Steps programme has meant that the providers of functions such as the issue of passports, social security benefits, driving tests and many other services of value to companies or individuals have been established in Executive Agencies, of which there are now ninety. Their aims and objectives and the structure within which they operate are set out in published framework documents. Both performance targets and achievements against targets are published. Agencies publish their own annual reports and accounts, enabling MPs and the public to gain an understanding of their progress. Except where issues of commercial confidentiality are involved, they also publish their corporate and business plans. Nearly 60 per cent of the Civil Service now operates on this clear and open basis and the proportion is expected to rise to three quarters over the next few years.

PRIVATISATION

2.51 Many activities have been privatised. Not only has this provided benefits to the Exchequer and improved service to the customer, it has also clarified many of the costs and decisions which were formerly hidden within Whitehall. As shareholders, many people now understand far more about how the companies operate. In the case of the public utilities - where full competition has not yet developed - the regulators have ensured that matters of public interest are widely known and represented.

2.52 The regulators themselves can be called before Select Committees, and their decisions are subject to judicial review. Their annual reports are published, including details of complaints and, where appropriate, comparisons between the companies, and they often undertake public consultation before making decisions.

2.53 The improvements resulting from a system of regulated private companies can be seen in the water industry, for example. The amount of

environmental monitoring and information has greatly increased since privatisation, which established external supervision on such matters as drinking water quality and pollution control on which the water authorities were formerly their own supervisors.

CONTRACTING OUT

2.54 Similarly, the extension of contracting-out for work which was formerly undertaken in the public sector, first in local authorities and increasingly in central government, has clarified the respective responsibilities of the authority and the contractor, and led to more open discussion about what standards of service need to be specified. As the extent of the market testing initiative increases, more information will become available through the tendering and contracting process. The Government intends to require improved standards of openness to be applied to work carried out by contractors as well as to work done in-house.

THE OFFICIAL SECRETS ACT

2.55 To many commentators, section 2 of the 1911 *Official Secrets Act* epitomised the atmosphere of excessive secrecy about the workings of Government. It made any unauthorised disclosure of information by a public servant a criminal offence and because new recruits to the Civil Service signed the Act on their first day it contributed to the culture of secrecy which the Government is now seeking to reduce. Section 2 of the 1911 *Official Secrets Act* was replaced in 1989. The catch-all provisions of the 1911 Act were replaced with specific offences, in most cases focused on tests of the harm likely to be caused by disclosure.

2.56 The Official Secrets Act continues to give special protection to vital information relating to our national security, but its reform was a clear demonstration that secrecy was no longer an end in itself, but had to be justified.

D NOTICES

2.57 The eight D Notices provide written guidance for editors on defence and security matters on which publication could be damaging to national security. The Notices are issued by the Defence Press and Broadcasting Committee (DPBC), which comprises senior Government officials and media representatives. The DPBC commissioned a review of the D Notice System

last year and will shortly be meeting to consider its recommendations. The aim of the review is to consider how the D Notice system can be made more transparent and relevant in the light of international changes and the increased emphasis on openness in government.

SECURITY AND INTELLIGENCE SERVICES

2.58 The Government has avowed the continuing existence of the Secret Intelligence Service and named its Chief and the Director General of the Security Service. On 8 May 1992, the Government also announced the transfer of responsibility to the Security Services for intelligence work against Irish Republican terrorism on the mainland, and on 5 June Vauxhall Cross and Thames House were acknowledged as the future headquarters of the Secret Intelligence Service and the Security Service. GCHQ has been avowed since 1983 and the name of its director has been announced as a matter of course for many years.

HISTORICAL RECORDS

2.59 The Chancellor of the Duchy of Lancaster has invited historians and others to suggest which historical records held by Government should be released, and has been able as a result to bring forward significant amounts of information.

2.60 Papers already released have covered Rudolf Hess, the Farm Hall Tapes, Shingle Street, the German occupation of the Channel Islands during the Second World War and the Derek Bentley case. GCHQ is reviewing and preparing the Signal Intelligence shown to Sir Winston Churchill in World War II for release later this year or in 1994. Historic Papers dealing with the Secret Vote before the First World War will be released at the time of publication of this White Paper. A fuller list is given in Annex D.

2.61 The Joint Intelligence Committee papers will from now on be reviewed with a view to release, like other documents under the thirty year rule.

CONCLUSION

2.62 The common thread in all the changes and improvements which have been described above is that public services are there to serve the public. The Government is making sure that this happens. People should be able to understand what their rights and entitlements are when using any public

services and they should be confident that secrecy will not be used to cover up failures or mismanagement. Public servants now generally wear name badges if they deal with members of the public, and give their names in letters or on the telephone. Public services are becoming more responsive - consulting users and tailoring services to match local needs. Better systems for complaints and redress are being developed, so that apologies are given but that the service also learns from its mistakes. The Government is making progress in all these areas and will continue to do so.

CHAPTER 3

REASONS FOR CONFIDENTIALITY

3.1 To distinguish necessary from unnecessary secrecy it is important to be clear when confidentiality is in the public interest, and why.

3.2 Where rights of public access to information have been defined in legal terms, whether in the UK or other countries, the rights of the applicant for information have always been qualified. The 'Right to Know', or 'Freedom of Information' is everywhere a limited right or freedom, in the sense that all such legislation specifies exemptions protecting justifiably confidential material. These exemptions tend to cover similar ground:

- defence and national security;
- international relations;
- law enforcement and legal proceedings;
- internal opinion, discussion and advice;
- management of the economy and collection of tax;
- public authorities' commercial and negotiating interests;
- personal privacy;
- commercial confidentiality;
- information given in confidence;
- limiting unreasonable or voluminous requests;
- limiting premature disclosure.

3.3 One of the difficulties of creating a precise division in law between circumstances where disclosure is required and those where it is not, is that under some of the above headings there is likely to be a spectrum of cases. Disclosure will sometimes be in the public interest and sometimes not. Legislators must decide how much flexibility to leave those interpreting the law, so that they can take sensible account of the circumstances of each particular case.

3.4 This is one reason why the wording and form of exemptions varies from country to country. Whether exemptions are expressed in statute, or in a Code of Practice, it is important that they should cover what needs to be protected and only that. This Chapter looks at the rationale for exemptions, notes the variety of international approaches to them and identifies some of the difficulties the Government sees in the way the exemptions in, for example, this Session's *Right to Know Bill* were expressed.²

DEFENCE AND NATIONAL SECURITY

3.5 Information made available to the public is also potentially available to hostile governments or terrorist organisations. Information whose release could be used to damage our defence and national security must therefore be protected. But absolute protection of everything relating to such matters would mean withholding information of proper public interest, such as the strategy and value for money of the defence budget, or the facts of incidents causing death or injury to servicemen or civilians.

3.6 Legislation can exempt all information relating to defence, security and terrorism, or can exempt such information only if its disclosure would be actually or potentially harmful. It may set out (as in Canada) a specific list of kinds of information which will not be disclosed - concerning, for example, weapons, military operations or cyphers. Government agencies whose information is largely of a necessarily secret kind, such as the security and intelligence services, are in some countries excluded from the scope of the access requirements altogether, or in others included but subject to exemptions which in practice need to cover a large part of their information. Whether particular information needs to be protected is in some countries established by conclusive Ministerial certificates; in others it is judged by whichever body hears appeals against refusals to supply information.

3.7 The Government believes that decisions affecting national security and defence should be taken by Ministers accountable to Parliament for those matters. In the final analysis Ministers are best placed to judge what is likely to cause damage. The Government believes that information should in general be protected only where its release would cause, or be likely to cause, actual harm; but sees no merit in introducing access rights in respect of categories of information which are so sensitive as to be largely secret in nature.

2. The *Right to Know Bill* is the latest of a series of Private Member's Bills prepared with the assistance of the Campaign for Freedom of Information. It was introduced in the 1992-93 Session by Mr Mark Fisher, MP. References are to the Bill as amended in Committee.

INTERNATIONAL RELATIONS

3.8 With more and more important decisions being taken at an international level, it is important for the issues and choices facing the international community to be clearly explained and understood. This is one of the reasons why the Government has strongly supported the development of informed global discussion and action on major environmental issues, and within the European Community has supported efforts to increase the transparency and openness of Community decision making.

3.9 But Governments cannot conduct their international relations with all the cards facing up all the time. There must for example be room for privacy for papers assessing negotiating options and sensitive developments in other countries. Communications between international bodies increasingly play a major part in efforts to combat terrorism, drug trafficking, international financial fraud and other crimes. If the confidentiality of such information cannot be guaranteed, sensitive information which may be vital in the fight against crime would not be shared between cooperating authorities.

LAW ENFORCEMENT AND LEGAL PROCEEDINGS

3.10 Our system of justice is open. It is not only carried on in public, except when the nature of the subject matter, eg the private affairs of the citizen or matters of national security, cause the court to sit in chambers or in camera; but it requires the prosecution in criminal cases and all litigants in civil cases to reveal all documents, however private, relevant to the doing of justice in the case. To this there are some exceptions, in particular the doctrine of public interest immunity. In the field of government, this provides for certain classes of document, eg matters of national security or high level advice to Ministers, to remain confidential unless the overriding requirements of justice require their disclosure. The courts have developed their own system for the handling of these difficult issues. Except insofar as it may become Government policy to invite the courts to accept a change in the practice in relation to a particular class of document in favour of wider publication, it is not intended that this White Paper should lead to any change in present practice in this area.

3.11 The right of government and public authorities to receive legal advice in confidence is usually protected in access legislation. There will be occasions when such advice can and will be published, but government and public authorities would be significantly handicapped both in litigation and in their day-to-day conduct if they were unable to seek and obtain legal advice in

confidence. The *Right to Know Bill* included an exemption in this area, but it was restricted to information recorded in connection with pending or contemplated legal proceedings. The Government sees no justification for such a restriction.

3.12 There should be no commitment to disclose information which would help potential lawbreakers and criminals, put life, safety or the environment in danger, or prejudice the security of penal institutions. This means, for example, that information about addresses or other matters of interest to terrorists or information about the location of some rare species or habitats should not be disclosed. Investigation of suspected crime including fraud must normally be kept secret from the suspect and others. Witness statements, names and addresses of witnesses and reports from the police and others to prosecutors could, if disclosed other than as required by the courts, jeopardise law enforcement or the prevention or prosecution of crime, or be extremely unfair to a temporary suspect against whom (in the event) no real evidence existed. It is in the interests of both the individuals concerned and the integrity of the prosecution process that material relating to both live and completed prosecutions and to prosecutions which do not go ahead can be kept confidential.

3.13 A great deal of sensitive information is obtained by public authorities in the course of enforcing and administering regulations relating to competition, fair trading, company law, financial services, banking, pensions and insurance. Unauthorised disclosure of information collected in these contexts is often a criminal offence under provisions listed in Annex B. The Government believes that the existing statutory restrictions are important, and should only be amended if a specific need is shown. In addition to the legal and ethical considerations arising if past statutory guarantees of confidence and companies' legitimate expectations of confidentiality are set aside, ill-disciplined disclosure could impair the ability of the regulators to secure information, effectively reducing their ability to protect the public interest.

INTERNAL DISCUSSION, OPINION AND ADVICE

3.14 Confidentiality of opinion, discussion and advice within government is widely accepted as being consistent with the public interest. As well as particular protections for Cabinet papers, it is common for access legislation to protect internal proceedings, discussion, opinion and advice. Governments and public authorities should be able to think in private, and this means that notes of internal discussions and exchanges should be protected. In the absence of such protection there would be a risk of loss of candour in

discussions, and an increasing gap between what is said at meetings and on the telephone and what is recorded on the files.

3.15 Confidentiality of advice is all the more important where the permanent Civil Service is politically neutral. Candid and robust advice could become more difficult if it could be disclosed and quoted one way or the other in support of political positions, and political neutrality and the confidential relations between civil servants and Ministers could be eroded. It is not credible, as is sometimes argued, that all that needs to be done is to remove the name of the official when publishing the advice.

3.16 A distinction is sometimes advanced between advice and expert advice. For example the *Right to Know Bill* included advice, recommendation and opinion among its exemptions (Clause 21), but restricted the exemption so that it applied only to advice given in the process of policy formation and did not apply to expert advice, defined as advice offered on the basis of qualifications and experience relating to a particular matter. In many circumstances it will be right to publish expert analysis when policies and decisions are announced - for example the reasons why a particular product or process has been found to be unsafe or resources available for scientific research have been distributed in a particular way. In other cases, expert analysis is a systematic part of the process of policy formation, and while it will be right to present the analytical considerations relevant to an announced policy or consultation paper, it would be damaging to internal candour to disclose internal expert advice and analysis invariably and in full. This might create pressure on key advisers to avoid expressing differences of view on a critical option or decision. For similar reasons it may be counterproductive to restrict the 'policy advice' exemption to advice given in the process of policy formation. Internal candour may be just as important in assessing the effects of existing policies.

MANAGEMENT OF THE ECONOMY AND COLLECTION OF TAX

3.17 Economic management requires careful assessment of options and developments before decisions are reached. As noted in Chapter 2 there has been a very significant increase in the amount of factual and analytical information which is available to Parliament to inform the budgetary and public expenditure planning process.

3.18 But there is a continuing need for confidentiality and caution about a range of economic management information. Premature disclosure of information on some proposals, or sometimes even admission of the fact that

an option is being or has been considered, can lead to speculation, disturb markets and at worst lead to improper gain. The *Right to Know Bill* followed some overseas access legislation in listing particular instances of premature disclosure which could be regarded as sensitive and therefore merit protection. The Government doubts whether it is practicable to set out such a finite list of possibilities, and notes that where similar examples have been given in overseas legislation they have tended to be illustrative rather than exhaustive.

3.19 Effective economic management also requires that the flow of revenue to the Exchequer should not be undermined by determined tax avoiders and evaders learning how to exploit the system. Given the recent increases in financial sophistication and mobility these can very rapidly cost substantial sums running into thousands of millions of pounds if unchecked. Some countries with freedom of information legislation approach this by having a general anti-avoidance provision in their tax legislation and by stringent compliance powers. The UK has no such provisions and its revenue compliance powers are predicated on the basis that some information about the working of the system is kept confidential. The Government believes that most information about the tax system could and should be made public, but it believes a small proportion of information needs to be withheld to prevent very substantial loss of tax.

EFFECTIVE MANAGEMENT OF THE PUBLIC SERVICE - DAMAGE TO PUBLIC AUTHORITIES' COMMERCIAL AND NEGOTIATING INTERESTS

3.20 In many cases the effective management of the public service will demand that internal discussion, advice and management information relating to the executive arms of government, such as the health service or local authorities, should be protected.

3.21 It is common for access legislation to provide that the commercial operations or negotiating positions of public bodies should not be prejudiced. There is also a general question of whether those parts of government which operate on largely commercial lines should be required to disclose information which private sector competitors would not be required to disclose, and which may therefore damage their competitive position. In Australia, the commercial operations of most public bodies are outside the scope of the Freedom of Information Act. The Government believes that this is a sensible approach, which resembles the exclusion of nationalised industries and bodies acting in an exclusively or predominantly commercial manner from the jurisdiction of the Parliamentary Commissioner for Administration.

3.22 Chapter 2 noted that privatisation, market testing and contracting out has often improved transparency about outputs and costs. Plans to extend the market testing and contracting out of Government services will be implemented in such a way as to ensure that the objectives of this White Paper are not undermined. Information which would otherwise be available will not be denied because a function is operated on behalf of a department or other public authority by contractors, nor will protection for properly confidential material be relaxed.

PERSONAL PRIVACY

3.23 Third party confidences represent a high proportion of the information protected by the existing statutory restrictions on disclosure of information, discussed in Chapter 8 below. Access rights to personal information commonly distinguish between the right of the subject to see information about him or herself, and protection of personal records from inappropriate disclosure to third parties, in effect a guarantee of the privacy of personal information. The Government attaches high priority to the protection of personal privacy.

3.24 Access laws invariably recognise some circumstances in which it is not appropriate for individuals to see all records relating to themselves. Some examples are given in the discussion of law enforcement above. Another case is where disclosure of information is judged to be potentially harmful to the health of the applicant. The extent of retrospective access to medical records was also very carefully considered when existing access rights were introduced, and it was decided that where records had been written on the understanding that the subject would not see them, it was potentially damaging to the relationship between health professionals and their patients to provide for a right of retrospective access. The Government is not aware of any new arguments which point to a change in that decision. The limits to retrospection (there is no right of access to health records compiled before 1 November 1991) will become less restrictive in relation to likely applications as time passes, and they do not inhibit discretionary disclosure by the holders of records. The Government has no proposals to change the treatment of these issues in existing legislation - the *Access to Medical Reports Act 1988* and the *Access to Health Records Act 1990*.

3.25 There is similarly a strong case for maintaining the confidentiality of assessments and references which have been given in the past on the understanding that they would not be seen by the subject. Retrospection in this area would entail a breach of past understandings. Nor is the

Government persuaded that there is a case for making the provision of confidential references impossible in future by extending subject access to these or to comparative assessments of applicants to the Civil Service or those being considered for or holding public appointments. There is a risk that references would be less discriminating and candid if the subject was expected to see them, and the quality of decision making would be seriously affected. No access right could prevent negative observations in oral and unrecorded form. In addition, public appointment and recruitment decisions often involve making personal judgements and assessments in an essentially comparative form, so it would be impossible to give intelligible access to papers without infringing the privacy of other candidates.

3.26 Disclosure of information from criminal records for employment vetting purposes is an issue that raises complex considerations including both effective vetting processes for particular positions of trust, and the successful rehabilitation of offenders. There is already a tendency for some employers to require employees and prospective employees to make a subject access request under the Data Protection Act to the police for any details about them which may be held on the computerised police record. Requests for a similar purpose are sometimes made to the Benefits Agency. The Home Office is preparing a consultation paper on this issue, and the responses will be carefully considered before the proposed access right to personal information is finalised.

3.27 Much of the information collected for statistical purposes is gathered under guarantees of confidentiality. The Government has no proposals to relax these. Apart from the breach of trust which this would represent, retrospective relaxation would tend to undermine the credibility of similar guarantees given in future, prejudicing sources of information.

COMPETITIVE POSITION OF A THIRD PARTY

3.28 The protection of commercially sensitive third party information is an important obligation on government, whether the information has been obtained under statutory compulsion or given voluntarily. Most access laws protect trade secrets, intellectual property and manufacturing know how, but not all information which is commercially sensitive falls within these categories. For example it may be commercially damaging for information about a hazardous product or manufacturing process to be published, but where there is a threat to public health or safety or the environment it is right to take action and to ensure adequate public information. The legislation regulating privatised utilities already provides for disclosure of

information of public interest - relating for example to performance and service quality, the regulators' duties to promote competition, environmental matters, or human health and safety - while protecting necessary commercial confidences.

3.29 Some overseas access rights require the balance of public interest to be assessed case by case. Others place a more absolute emphasis on keeping trade secrets confidential. The United States *Freedom of Information Act* and the Canadian *Access to Information Act* appear to tip the balance a little more in favour of disclosure than, for example, the Dutch and French access to information laws. It is not clear whether this leads to the disclosure of significantly more commercially sensitive information, but there does appear to have been a high level of use of information laws for commercial purposes in North America. In the US, for example, there has been a significant body of litigation associated with 'reverse' FoI actions, in which applications to disclose commercially sensitive information have been contested by the companies affected.

3.30 The Government recognises the case for increasing the transparency of health and safety regulation to the advantage of both the general public and industry, who sometimes feel that inadequate reasons have been given for burdensome regulatory decisions and requirements. Better public information about risks and threats to health and safety is an important objective of the proposals in Chapter 6. We believe that transparency can be increased without compromising intellectual property and trade secrets, and without creating a new legal industry in which the details of particular disclosures are fought out between seekers and providers of information.

3.31 It should be a basic principle that commercial interests are normally consulted about proposals to release specific information concerning them, although this will not always be possible where urgent public health warnings must be given. In general, within the common regulatory frameworks of the European Single Market, care will need to be taken to align practice on disclosure with that of Community partners, especially where product approvals obtainable elsewhere in the Community would be valid in this country. The Community licensing regime for medicines is a case in point, further discussed in Chapter 6, in which the UK is pressing for a consistent and open regime.

INFORMATION GIVEN IN CONFIDENCE

3.32 Many access laws accept that disclosure of confidential information given voluntarily to the Government could prejudice the future supply of such

information. The discussion of international information exchanges and law enforcement above touches on this issue.

3.33 The Government believes that a requirement to give access to assessments of suitability for appointment given in confidence would be potentially harmful, for the reasons given in paragraph 3.25 above.

3.34 Consultation papers now commonly mention that responses will be made public unless the person sending the response specifically requests that it should not be published. As there are circumstances when confidentiality is justifiable - for example when a response illustrates a point by referring to a personal or private matter - the Government sees no reason to make it impossible to respond to consultations in confidence.

3.35 Much of the information supplied in connection with grant applications is required to assess the viability of the project or company, and to assess whether the grant will meet government policy objectives. To assess such matters the authority paying grant may need to go quite deeply into the financial and commercial background of the company, but it would not be right to make such information freely available to the public and therefore to potential competitors. The information will be available to the National Audit Office or relevant official auditor, so there is adequate protection of the public interest in regularity, efficiency and effectiveness. In the context of its general programmes of support for industry, the Department of Trade and Industry collects a large amount of voluntary information which assists analysis and the targeting of Government policies. It would almost certainly damage such flows of information and the long term interests of British industry if all such information were subject to publication, and hence available to competitors.

UNREASONABLE OR VOLUMINOUS REQUESTS

3.36 It is common for rights of access to be limited where meeting applications would require significant diversion of resources, or otherwise undermine the work of the authority holding records. This seems to the Government sensible.

PREMATURITY

3.37 Many overseas access laws relate only to finished documents, so that drafts and internal working documents cannot be demanded. Access rights may also provide exemptions where information is being prepared for

publication, is about to be published, should first be made available to Parliament, or where prematurity of publication could prejudice the interests of researchers within government. Premature disclosure of incomplete analysis, research or statistics can be misleading, as well as depriving the authority concerned of priority of publication and, in some cases, commercial value through intellectual property rights.

MATERIAL WHICH IS ALREADY PUBLISHED OR IN OPEN ARCHIVES

3.38 Many access laws give no special access to archive material, so that authorities are not required to provide any special or unusual service in assisting applicants to do research. There should be no requirement for public authorities to make special arrangements under access rights to provide information which has already been published, is readily available in a library or in open archives, or which is available as part of a charged service.

WHO DECIDES WHERE THE PUBLIC INTEREST LIES?

3.39 In many of the areas listed above, there is a public interest in disclosure and a public interest in confidentiality. How should the balance be decided? In overseas access laws some exemptions are mandatory (ie binding in the sense that the public authority may not give information within a certain category) others discretionary in the sense that the public authority may release information, but is not obliged to do so. Where room is left for judgement in the light of particular circumstances, it may take the form of a provision allowing the enforcement authority to set aside an exemption if the public interest so requires, or the discretion can be left to the public authority - for example in the form of a right to issue conclusive certificates that particular information is exempt.

3.40 The Code of Practice proposals in Chapter 4 and Annex A below will protect the public interest against unnecessary or unjustifiable secrecy, and have the potential to expose any use of secrecy to conceal injustice, maladministration or other forms of wrong doing. Where there is a finely balanced judgement to be made between the public interest in openness and the public interest in confidentiality in a particular case, the Code of Practice will allow (through the Parliamentary Ombudsman's reports) informed criticism of the Government's decisions, while retaining the principle that Ministers are accountable to Parliament for their actions. It will remain the function of auditors to guard against misuse or unauthorised use of funds, and the function of the courts to guard against injustice to the individual.

CHAPTER 4

A CODE OF PRACTICE ON GOVERNMENT INFORMATION

4.1 Chapter 3 outlined areas of necessary confidentiality which are recognised in one form or another in most democracies. Within these limits, the Government's objective is to establish a more open administrative culture and a more disciplined framework for publishing factual and analytical information about new policies, and reasons for administrative decisions.

4.2 A general declaration in favour of openness is not enough. The vigilance with which it is observed may fade, and it may be bent to the convenience of holders of information, rather than those seeking it.

4.3 The essential requirements to make the intentions set out in this White Paper stick are:

- a clear statement of principle on what kinds of information will be available;
- a clear statement of the circumstances in which information can justifiably be withheld;
- detached, authoritative and independent supervision.

4.4 The Government proposes to develop a Code of Practice, and supporting means of delivery of information to the public, which will meet these objectives. A draft Code is set out for consultation at Annex A.

4.5 Whether the purpose is to show what is on offer from public services, to improve understanding of rights, benefits and taxes, or to improve policy making and the democratic process by explaining the basis of proposed policies, information should be volunteered by government and be readily available. But there should also be an effective mechanism for answering enquiries and telling people what they want to know - filling gaps in the published information.

INFORMATION WHICH SHOULD BE VOLUNTEERED

4.6 The Code seeks to ensure that certain information is volunteered and published, as opposed to being withheld unless specifically requested. This includes:

- the facts and analysis of the facts which the Government considered relevant and important in framing major policy proposals and decisions; such information will normally be made available when major decisions are announced;
- explanatory material, including departments' internal guidance on dealing with the public, and guidance on rules and procedures, except where publication would prejudice any matter which should properly be kept confidential under Part II of the Code;
- information explaining reasons for administrative decisions; such information should be made available to those affected (there will be a few justifiable exceptions to this rule, for example when a selective discretion is exercised in relation to honours, appointments or promotions, when a decision is made not to prosecute, or where there is a well established convention or legal authority not to give reasons for decisions);
- information relating to standards of service, targets, objectives, and performance audited against such standards.

In addition, reasonable requests for factual information relating to the policies, actions and decisions of departments will be met, subject to a charge to cover costs of additional work.

EXEMPTIONS

4.7 As with all schemes of access to government information, the areas of necessary confidentiality will be protected. The list of exemptions in Part II of the Code reflects the analysis in Chapter 3 above, and precedents for most of its provisions can be found in various overseas and United Kingdom access laws. There is some advantage in setting these out in a Code, rather than in primary legislation which is less easily amended.

4.8 The Code creates a commitment to give access to information rather than particular pre-existing documents. People will in general find it easier to describe the information they seek, rather than the documents they wish to see. Attempts overseas to provide the public with a full guide to the filing systems of departments have not by most accounts been successful: document holdings may be enormously diverse and voluminous, dispersed in miles of shelving in many different locations. Editing policy papers against exemptions (as is required in some access laws) can be a laborious process,

and in the end produces a document which is at best partial and at worst misleading. The progress of information technology means that information relevant to a particular request can often be prepared more efficiently by using word processors and computers than by referring to paper records and editing them.

PERSONNEL INFORMATION

4.9 The Code is directed to public access to government information; it does not govern access to information on personnel matters, nor are such matters normally within the jurisdiction of the Parliamentary Commissioner for Administration.

CHARGES

4.10 The Government's approach is explained in Chapter 7.

SCOPE

4.11 The Code is essentially a central government initiative. It is intended to apply to all departments and bodies within the jurisdiction of the Parliamentary Commissioner for Administration. This is governed by the continually updated Schedule 2 to the *Parliamentary Commissioner for Administration Act 1967*.

4.12 The Government considers that the Code of Practice approach could be applied equally well to the NHS. We shall therefore consult with the major interests concerned and then publish proposals for consultation.

4.13 The Government will discuss with local authority associations how to take forward a similar code of practice for local authorities.

IMPLEMENTATION

4.14 In accordance with the general policy of delegating decisions on the means of delivery of services to those responsible for day-to-day management, no single central plan of operation will be imposed. Departments, agencies and other public bodies will prepare schemes of operation which best meet the needs of the public in relation to their own holdings of information, and the functions and services for which they are

responsible, following the principles set out in the draft Code. Some departments may build new arrangements on their library service, others on an information department or perhaps a ministerial correspondence section. Contact addresses and telephone contact points will be made available when implementation plans are ready.

4.15 Departments will ensure that where services are being delivered by contractors, the Government's policies both on openness and the protection of private and sensitive third party information will be strictly observed, and contractors will abide by relevant provisions of the Code.

4.16 Central monitoring of the overall effectiveness of the scheme will be the responsibility of the Office of Public Service and Science in the Cabinet Office, which will also take the lead, consulting the Ombudsman, on future revisions of the Code.

INDEPENDENT SUPERVISION

4.17 The Government expects that most departments will set up their own procedures for review of complaints from people who feel they have been refused information which should have been available under the Code.

4.18 But where individuals are still dissatisfied, they will be able to take their case through an MP to the Parliamentary Commissioner for Administration (the Parliamentary Ombudsman), who will be able to provide independent review of complaints.

4.19 The *Parliamentary Commissioner for Administration Act, 1967*³ gives the Ombudsman broad discretion whether to investigate a particular complaint. The key element is that there must have been 'injustice as a consequence of maladministration'. Whether or not he accepts a complaint for investigation is a matter for the Ombudsman but he has said that, in the context of a failure to provide information in accordance with the Code, this would not mean that the person bringing a complaint would necessarily have to show some demonstrable injury or disadvantage arising from refusal of information. It would be enough to found a complaint that the person or persons concerned had not been given information which, in accordance with the Code of Practice to which the Government is committed, they believed they were entitled to have.

3. The Northern Ireland Ombudsman's powers and jurisdiction are set out in the *Parliamentary Commissioner for Administration (Northern Ireland) Act 1969*. Differences in jurisdiction and procedures will be taken into account in finalising and implementing the Code of Practice in its application to Northern Ireland. The Local Government Commissioners and the Health Service Commissioners will be consulted on their roles in relation to the Codes envisaged in paragraphs 4.12 and 4.13.

4.20 Although the Code does not itself provide access to any particular document or paper, the Ombudsman has a right of access to departmental working papers and can check that the information provided is consistent with them and constitutes a proper response to the application, within the limits of the exemptions in Part II of the Code. It will then be up to the Ombudsman to recommend further disclosure if he considers that there should be disclosure where disclosure has been refused before. The recommendations of the Ombudsman have almost invariably been accepted in the past. If any department were to fail to comply with his recommendations they could expect to be called to explain themselves before the all party Select Committee on the Parliamentary Commissioner for Administration, just as they may now be cross-examined on criticism in the Ombudsman's annual or special reports laid before Parliament.

4.21 The Government sees advantage in involving the Parliamentary Ombudsman in supervising compliance with the Code, as opposed to the courts or the Information Commissioner and Tribunal proposed in the *Right to Know Bill*, for a combination of reasons:

- The Ombudsman is an officer of Parliament, and in the last analysis Ministers are accountable to Parliament for the decisions they have taken on his recommendations; Parliament would have no *locus* in the decisions of an independent Information Commissioner or Tribunal;
- many of the decisions on access to information involve a fine balance between the public interest in disclosing information, and the public interest in withholding it. There is a case for retaining an element of parliamentary accountability for such decisions, and flexibility to weigh and assess the balance of factors;
- an approach based on purely legalistic interpretation can make the holders of information extremely cautious. They may take a restrictive line not because of the merits of a particular case, but because they fear a precedent which would be binding in other more sensitive situations;
- an ombudsman can afford a more constructive, persuasive and informal dialogue with departments;
- a legalistic approach can be costly. Whether decided before courts or a tribunal, the case tends to be argued out by lawyers and the body

withholding information can often afford more than the applicant by way of legal advice and representation. The Parliamentary Ombudsman's services cost the applicant nothing;

- the Ombudsman approach has been shown to be effective in the UK; although the Parliamentary Ombudsman has no power to enforce his decisions, there is a very high level of compliance with his recommendations.

4.22 The resource implications of this additional function will be discussed with the Parliamentary Commissioner for Administration, in order to ensure that additional work will not impair the present functions of his office. Although his caseload is difficult to predict precisely, it can to some extent be abated by careful preparation within departments, vigorous compliance programmes, and effective internal complaints procedures.

BRINGING INTO FORCE

4.23 To allow adequate preparation both by departments and the Ombudsman's office the Code does not take effect immediately:

- comments are invited on the overall proposal, and the draft Code of Practice set out in Annex A below.
- subject to the conclusion of consultation, departments will prepare plans for bringing the Code into effect from 4 April 1994.

CHAPTER 5

A NEW RIGHT OF ACCESS TO PERSONAL RECORDS

5.1 At the heart of the Government's philosophy is a belief in the need to return to individual citizens the power and means to make their own choices and to determine their own priorities. The Government has insisted that public institutions exist to serve the individual, not the other way about. This is a simple enough proposition; but one that has required a radical shift in public policy to re-establish. The proposition lies at the core of the Citizen's Charter.

5.2 As a result of the initiatives that have been taken to modernise and restructure the processes of government, public institutions are now more open and more responsive to the needs and views of those they serve. These structural changes have brought with them a change in the culture on openness at all levels in the public sector. Those who work in public institutions dealing with members of the public now regard it as an integral part of their job to ensure that their customers know what kind of information is held about them; why it is needed; and how it is used in considering their particular case.

5.3 The Government welcomes this, and believes that confidence in our public institutions will be enhanced still further if this approach is enshrined in a statutory right of access to personal records.

EXISTING STATUTORY PROVISIONS

5.4 Chapter 2 referred to some of the steps that have already been taken to give people a right of access to particular categories of records held on them.

5.5 Foremost among these was the passing of the *Data Protection Act 1984* which sets out the principles by which users of computer held data ought to operate and provides individuals with a right of access to the records held about them on computer in both public and private sector organisations.

5.6 Other Acts have been passed in recent years to extend rights of access. A number have been sponsored by individual MPs with the Government's support. The *Access to Personal Files Act 1987* gives

individuals the right to see the records that local authorities hold on them relating to social services and housing tenancies. The *Access to Medical Reports Act 1988* provides for subject access to medical reports prepared for insurance or employment purposes. And the *Access to Health Records Act 1990* gives patients the right to see the records held on them by their GPs, health authorities or NHS Trust. Comparable provisions for Northern Ireland are contained in the *Access to Personal Files and Medical Reports (Northern Ireland) Order 1991* and the *Access to Health Records (Northern Ireland) Order 1993*.

5.7 The Government undertook in its 1992 election manifesto to take this process further and to provide for greater access to personal records held by government.

A NEW STATUTORY RIGHT OF ACCESS TO PERSONAL RECORDS

5.8 The Government now proposes a new and more comprehensive statutory right of access, by the subject, to personal records held by government and by other public sector authorities.

SCOPE

5.9 The precise scope of the new access right will be determined after further consultation, including comments received in response to this White Paper. The consultation will cover a wide range of public service bodies including:

- government departments and agencies
- non departmental public bodies
- regulatory authorities and inspectorates
- the National Health Service
- local authorities
- police forces
- schools, colleges, universities and other educational bodies.

5.10 As with the other proposals in this White Paper, it is not intended that this new access right will apply to the courts, for which separate arrangements apply.

PROVISIONS OF THE NEW ACCESS RIGHT

5.11 The new access right would have the following features:

- i) It would be exercisable by 'natural persons', in other words by individuals in their private capacity. The Government does not envisage it extending as a right to corporate bodies, companies or sole traders - nor to individuals in their business capacity.
- ii) There would be no restrictions as to nationality or residency. The right would be exercisable by anyone on whom a UK public authority held personal information (but see paragraph 5.16 below on immigration, nationality, consular work and entry clearance).
- iii) As in other legislation of this kind, there would be special provision for cases where the subject of the record was a child. Similarly, there would be provision for nominated representatives to act on behalf of those unable to manage their own affairs.
- iv) The Government will be considering further whether this new statutory right should extend to next of kin and executors or administrators in relation to personal records of the deceased. The *Data Protection Act 1984* applies only to personal data on living persons, and there are of course separate arrangements already in place for next of kin and executors or administrators to have access to records that they need to see.
- v) There would be provision for correcting inaccurate, misleading or out of date information; and for compensation to be paid for material damage or distress arising from any such incorrect information.
- vi) The right would be defined in terms of access to documents or papers - or more specifically to copies of documents or papers, with exempted material edited out as necessary. Where the primary document uses compressed short-hand terms or codings it may well be considerably less informative to the applicant than a separately prepared

explanatory note would be. The Government sees no reason to change the present practice of providing such explanatory information in the first instance; but if dissatisfied the applicant would be able to apply for copies of any source papers (edited as necessary to exclude exempted material).

vii) For the purposes of this access right, a 'personal record' would be one which is reasonably readily accessible by reference to the subject's name.

viii) The new right would apply to records created on or after the date on which the relevant legislation comes into force. Records created prior to that date may be made available on a discretionary basis, but the Government believes that making the access right itself retrospective could put an unacceptable administrative burden on authorities.

ix) The principles of charging for meeting requests under this new access right are discussed in Chapter 7.

RELATIONSHIP WITH THE DATA PROTECTION ACT 1984

5.12 In many respects the proposed access right mirrors the provisions in the *Data Protection Act 1984* for access to personal data held on computer. This is deliberate. The proposal can indeed be seen as extending to manual files held by public sector authorities the access right to computer based files that the Government introduced under that Act.

5.13 As with the Data Protection Act, there are two related aims. One is to allow the individual citizen to have access to his or her records. The other, no less important, is to ensure that personal privacy is maintained and that such records are only available to those authorised to see them.

SAFEGUARDS AND EXEMPTIONS

5.14 The new right of access will therefore contain similar safeguards to ensure that the records are made available only to their subject (or to an authorised representative). This will mean, among other things, that where a particular record relates to more than one person, the rights of privacy of the third parties must be respected and observed.

5.15 As with all such access rights, the right of third party privacy is one of a number of safeguards and exemptions which will need to apply. The Government believes that public authorities will normally need to be able to refuse access in the circumstances set out in Annex A Part II, which are typical of those in access legislation adopted in other countries. Where appropriate the legal drafting for this access right will follow the equivalent provisions in the Data Protection Act.

IMMIGRATION, NATIONALITY, CONSULAR WORK AND ENTRY CLEARANCE

5.16 While the new access right will extend to non-UK nationals generally, the Government proposes to exempt records relating to immigration, nationality, consular work and entry clearance cases. These records frequently contain sensitive information provided in confidence by individuals and organisations. Section 44(2) of the *British Nationality Act 1981* contains specific provision exempting the Secretary of State from having to give reasons for the granting or refusal of citizenship applications and subject access would undermine this statutory provision. In immigration cases where an application is refused and a right of appeal against that decision exists an explanatory statement is prepared setting out the reasons for the decision and submitted to the independent appellate authorities who may request any further information they require in order to determine the appeal. The explanatory statement is also given to the appellant. In those cases where there is no right of appeal, the Government provides full reasons for the refusal to the applicant. The Government believes that these procedures provide the most appropriate way for those whose immigration and entry clearance applications are refused to challenge the decision and that a statutory right of subject access in this area would seriously weaken the maintenance of an effective immigration control to which the Government attaches great importance.

POSITION OF PUBLIC SECTOR PERSONNEL RECORDS

5.17 The Government believes that a distinction should be drawn between the rights of individuals as members of the public and the different relationship between public sector employees and their employers. It is not intended therefore for this new access right to extend to public sector personnel records, which would give public and private sector employees different rights. This would not, however, exclude access in exceptional circumstances to papers concerning health or safety or accident reports, and

would not limit access in circumstances where it would normally be available - for example to tribunals or under other review arrangements. Good management practices, for example the disclosure of annual performance reports to staff, will continue to be developed.

RELATIONSHIP WITH EXISTING ACCESS RIGHTS

5.18 The Government will be considering further how this new access right will relate to existing legislation on access; whether, for example, it should replace and subsume the provisions of some of the Acts and Regulations referred to in paragraph 5.6 above - or whether it should stand alongside these earlier provisions.

5.19 To some extent these are technical questions and there are technical arguments for and against. Whatever the conclusion, the Government's aim is to build on the provisions of these important access rights and not to weaken them in any way. Where these existing Acts contain specialist exemptions - see for example the discussion in paragraph 3.24 about the provisions in the *Access to Medical Reports Act 1988* and the *Access to Health Records Act 1990* - these would be retained.

APPEAL AND ENFORCEMENT

5.20 The Government is also considering further how appeal procedures for the new access right and mechanisms for enforcement will relate to those established under existing legislation - and to other non-statutory arrangements for appeal and redress that already apply in particular areas.

5.21 For an access right to be effective an applicant should have the ability to challenge the refusal of an authority to disclose the records asked for. As this new access right will be based in statute, litigation will always be the ultimate resort. But it can be helpful to all parties to have less formal means of resolving disputes before that point is reached.

5.22 As a first step in the process, the Government proposes that the authority holding the records in question should be obliged, when challenged, to conduct a review of its own decision. Such a review should, as a matter of course, be carried out by different officers than those involved in the initial decision. If such a review confirms the refusal, the reasons would be made available to the applicant.

5.23 The Government is confident that such reviews would be carried out scrupulously and fairly but there should also be access to an independent outside review body.

5.24 Such a mechanism already exists in the parallel case of the *Data Protection Act 1984*. The Government is consulting the Data Protection Registrar on the scope for extending his functions (and those of the Data Protection Tribunal) to cover complaints about the operation of the proposed new access right. If this does not prove to be practicable, consideration will be given to creating separate arrangements on similar lines.

CHAPTER 6

A NEW RIGHT OF ACCESS TO HEALTH AND SAFETY INFORMATION

6.1 There is strong public interest in government information on human health and safety. People want to know that the food they are eating will not poison them, that public transport is safe, or that they will be able to get out of a public building in the event of a fire. The Government clearly cannot remove every risk from daily life. Indeed many everyday decisions involve some sort of balance between possible risks and desirable benefits. But the Government can help people to assess risks for themselves, and do its best to ensure that certain minimum standards are observed and good practice is followed.

6.2 Where there is a clear threat to health or safety the public must be alerted and action taken. If too many warnings are followed up with statements that they were in fact false alarms, the public will not treat them seriously, but failure to issue warnings until a threat is established beyond doubt can smack at best of complacency, at worst of a cover up. Government departments are increasingly involving consumer representatives in their decisions on these matters, with the aim of increasing the public's confidence that the balance is about right.

6.3 The question of openness goes much wider than government's role as a public health watchdog, important though that is. On a day to day basis, people do not ask 'Is the UK's fire safety regime effective?' but 'How safe is this building?' Sometimes they can find out the answers to specific questions like this, sometimes they cannot. This patchiness has been a consistent source of frustration to many people, and the Government believes it is time for a change.

6.4 As indicated above (paragraph 2.24), in recognition of the importance of environmental issues, the Government has provided the public with new rights of access to environmental information through the *Environmental Information Regulations 1992*. This Chapter sets out how the Government proposes to extend the same principles to information held by the public sector on human health and safety.

AN ACCESS RIGHT

6.5 The Government proposes to create a statutory public right of access to information concerning human health and safety held by public authorities,

subject to exemptions protecting necessary confidentiality (see paragraph 6.9 below). As far as possible, the right will follow the model of the Environmental Information Regulations. The two rights complement one another, and it is sensible that they should be consistent.

6.6 The proposed access right will extend beyond health and safety at work to such matters as the safety of public places, transport systems, food, consumer goods and environmental health risks.

WHO DOES IT APPLY TO?

6.7 The right will apply to a wide range of information held by the public sector. This embraces government (national and local), including agencies, inspectorates and regulators with responsibilities affecting health and safety. The access requirements will apply where statutory services are delivered for, or on behalf of, such public authorities by contractors (by means agreed between the contractor and the service provider). They will apply to non-departmental public bodies and the remaining nationalised industries to the extent that they have public health and safety responsibilities.

6.8 The access right will allow access to information held by government regardless of whether it relates to the public or private sector. This will reinforce the existing incentives on industry and business to ensure that high priority is given to health and safety, but will not impose additional regulatory burdens. A key aim of the access right is to make the process of regulation much more transparent both to the public (in whose interests it is carried out) and to the industries affected, who have sometimes found regulatory requirements to be unclear or poorly explained.

EXEMPTIONS

6.9 While the Government wants to see as much information as possible open to public scrutiny, there will always be some material which must remain confidential, either to protect personal privacy or trade secrets, or to ensure that departments and public authorities with responsibilities for public health and safety can operate effectively. The considerations set out in Chapter 3 (Reasons for Confidentiality) apply to health and safety information in the same way as to the other proposals in this White Paper.

6.10 The exemptions to the access right will follow the same principles as the Code of Practice (see Annex A, Part II). When the exemptions are

expressed in legal form, account will be taken of the provisions of the Environmental Information Regulations, in order to avoid conflicting or incompatible requirements for information which may be relevant to both environmental and health and safety matters.

6.11 If information is withheld under any of the exemptions, the applicant will be entitled to written confirmation and an explanation of the reasons. The explanation would not, of course, include information which would itself be exempt.

CURRENT RESTRICTIONS ON DISCLOSURE

6.12 At present, the Government's ability to be more open with the information it holds is often defined by statutory restrictions on disclosure (see also Chapter 8 below). The restrictions are usually intended to protect commercial confidentiality and personal privacy. In some cases, however, the provisions restricting disclosure of regulatory information are too sweeping. The intention is that the access right should override any restrictions which would undesirably restrict disclosure, while protecting necessary confidentiality. It would not be possible to override statutory restrictions arising from EC legislation.

WILL THE ACCESS RIGHT BE RETROSPECTIVE ?

6.13 Much of the information provided to the Government in the past has been given on the basis of statutory guarantees of confidentiality. This has the advantage that organisations have generally been willing to answer questions in a full and frank manner. Many of these organisations would regard it as a breach of trust if the Government were to withdraw its guarantee of confidentiality after the event. Even if old records were weeded to remove any sensitive material, the work involved would be considerable and would divert senior staff from their primary task of protecting the public.

6.14 The Government therefore proposes that the access right should only apply from the date of commencement of the legislation which gives it effect. Organisations providing information from this date will thus be aware of the conditions under which they are operating and the new arrangements will continue to protect trade secrets and commercial confidences.

APPEAL AND ENFORCEMENT

6.15 For an access right to be meaningful, a member of the public must have a clear and effective means of challenging the refusal of an organisation to disclose information. Whilst litigation is the ultimate resort, it can be helpful to have less formal systems of resolving disputes.

6.16 Where a member of the public is not satisfied with a refusal to disclose information requested under the terms of the access right, there should be both:

- **Internal review.** Disputes may arise because an organisation does not apply its own rules properly or consistently, or because staff are insufficiently experienced. We therefore propose that organisations affected by the access right should set up their own procedures for reviewing appeals, which are independent of the original inspecting or decision-making chain. These procedures would be the first recourse of an appellant, and ought to ensure speedy settlement in many straightforward cases.
- **Independent external review.** To provide an external point of review for those who are not satisfied with the outcome of the internal review, there is a case for an independent tribunal to hear disputes. Because of the similarities between the proposed health and safety access right and the environmental access right, one option would be for a single tribunal to hear disputes relating to both access rights. However, a point of difference is that matters arising under the environmental access right may concern interpretation of the EC Directive, which would be for the European Courts. The Government will give further consideration to these options in consultation with the Council on Tribunals.

CHARGES

6.17 The principle of cost recovery set out in Chapter 7 below will apply.

MEDICINES

6.18 The availability of information about the safety of medicines has been the subject of much debate. Before they are sold in the UK, medicines must be licensed by the Government. Industry has to provide full details of

manufacture, and the results of safety and efficacy tests. Included amongst this information are trade secrets of great commercial and market sensitivity, which need to be protected if the pharmaceutical industry is to continue to invest here and to make new medicines available here. The Government recognises that there has been criticism of the current restrictions on the disclosure of information in Section 118 of the *Medicines Act 1968* and that these may need to be reconsidered in order to strike a better balance between the wish for greater openness and the legitimate requirements of commercial confidentiality.

6.19 As it happens, medicines are the subject of forthcoming European legislation. The outline of a Europe-wide licensing procedure has been agreed, and the practicalities are currently under discussion. The present intention is that the new procedure should come into force in 1995. Arrangements for the mutual recognition of national licensing decisions will then follow. The UK is seeking to ensure that the European procedures are as open as possible. Any necessary changes to domestic legislation to implement the agreed European procedures, or adapt UK procedures to them, will be made at the appropriate time.

6.20 In the meantime, the Government is working within the constraints of the present law to continue to increase the amount of information available to the public. The Department of Health is currently discussing a code of practice on access to information with the pharmaceutical industry, and the Medicines Control Agency now provides a wide range of information on the safety of medicines to ensure that health professionals are familiar with the risks of medicines. A bulletin called *Current Problems in Pharmacovigilance* is sent regularly to all doctors and pharmacists in the UK.

6.21 The Veterinary Medicines Directorate (VMD) publishes a similarly wide range of information on veterinary products. The veterinary pharmaceutical industry is also developing its QEST initiative (Quality, Efficacy and Safety through Transparency). This is a voluntary code of practice under which the industry (in liaison with the VMD) will in time provide a publicly available QEST dossier for each licensed veterinary medicine. The dossier will summarise both the data submitted to the licensing authority and the authority's views.

6.22 The Government will continue to build on these initiatives while the European discussions are under way.

CHAPTER 7

COSTS AND CHARGES

7.1 Providing information is not a cost-free exercise. It involves staff time in preparing material for publication, processing requests from the public, searching for and collating information, and dealing with any disputes. There are also other costs, like printing, copying and postage. Fulfilling the obligations of the new access rights and the Code of Practice described in Chapters 4 to 6 above will therefore mean extra costs for the organisations concerned.

COSTS

7.2 In most cases, the new access rights and Code of Practice will not place completely new types of obligation on organisations. They may, however, have to release more of a certain type of information or add new categories to the information they release at present. Systems for handling the release of information may already be in place, but may require development to deal with any extra demand.

7.3 The greatest amount of extra work is likely to come from having to find and prepare for release those personal records which at present would not be shown to the subject. Not only is this a new type of obligation, but experience overseas has been that requests to see personal files have constituted some 70-80% of total requests under their various access laws. Costs arising from the health and safety access right are likely to be unevenly distributed, falling particularly on authorities with relevant responsibilities such as the Health and Safety Executive.

7.4 Exactly how much of an extra cost burden the proposals in this White Paper will place on public authorities will largely depend on demand. The USA underestimated the volume of requests they would receive under their Freedom of Information Act. Elsewhere, experience appears to show that demand has been less than originally expected. To take an extreme example, the Federal Government in Australia overestimated the number of requests it would receive under its Freedom of Information Act by a factor of fifty-five.

7.5 If the UK followed the same pattern of demand as under Australian and Canadian Federal access laws, we might expect the number of additional requests for information to central government and national public bodies (allowing for population differences and charges similar to those adopted in

Canada and Australia) to be somewhere between 50,000 and 100,000 a year.

7.6 The access rights and Code of Practice will not take effect immediately. There will be time to consider ways of holding information that will make it easier to identify and separate out material which ought to remain confidential.

CHARGES

7.7 Where requests for information involve significant additional work for a public authority, the Government's view is that charges should cover reasonable costs. Charges enable public authorities to offset the costs they incur as a result of additional workload. Charges are also an important reminder to the applicants that providing information has its costs.

7.8 Departments will wish to consider whether to make a standard charge for processing all simple requests for information. When a request is complex and would require extensive searches of records or processing or collation of information it may be necessary to consider whether an additional charge, reflecting reasonable costs, should be notified to the applicant and be made payable before further work is undertaken.

7.9 A two-tier system on these lines would strike a fair balance between the interests of the public as **citizens** - in being able to have access at a reasonable cost to information held by their Government - and the interests of the public as **taxpayers** - in not having to bear the cost of a diversion of resources to assist the search and collation of information undertaken in pursuit of private or commercial interests.

7.10 Subject to the usual arrangements for priced publications, it is not the intention to charge for information which is now routinely provided free of charge, or which is volunteered (as opposed to being provided in response to requests) under the Code of Practice on Government Information.

RESOURCE IMPLICATIONS

7.11 The costs of the new proposals would be widely distributed across central government, its agencies and other public bodies. The intention is that costs should be borne where they fall, and that income from charges should be counted as negative public expenditure and offset against local costs.

7.12 The costs of dealing with complaints and disputes will fall partly on Departments, partly on the authorities investigating complaints. Where investigation of complaints falls to an existing office (as for example with the Parliamentary Commissioner for Administration under the proposals in Chapter 4 or, in respect of Codes for the NHS or for local authorities, to the Health Service Commissioners and Local Government Commissioners) it is not the Government's intention that the new functions should impair their other work. The cost implications for each office will be discussed in the appropriate public expenditure survey.

CHAPTER 8

REVIEW OF STATUTORY PROVISIONS**EXISTING STATUTORY FRAMEWORK**

8.1 The statute book adopts a variety of approaches to disclosure of official information. Not all of these are restrictive.

8.2 In some areas, specific access rights create a right to see certain information subject to exemptions. Chapters 2 and 4 mention some of these. Public authorities are required by law to disclose certain information, often in public registers. In other cases, authorities have discretion whether to disclose information.

8.3 In general, however, the approach adopted is to prohibit the disclosure of information held by government, except in specified circumstances. The Government has identified approximately 200 Acts with restrictive provisions of this kind. Most, but not all, of the provisions contain criminal sanctions against unauthorised disclosure of information. There is also a significant amount of secondary legislation, much of which implements these Acts or EC Directives. Both are listed in Appendix B together with discretionary provisions. The provisions are not uniform. Definitions of restricted information vary, as do the circumstances in which disclosure is permitted although these are generally designed to allow regulators to operate effectively and to disclose information where it is in the public interest to do so. *The Food Safety Act 1990*, for instance, allows Ministers to disclose information in various circumstances, including in the interests of public health or to protect or promote the interests of consumers.

8.4 In reviewing these provisions, we have concentrated on two issues. The first is whether the law itself - rather than administrative practice - prevents wider disclosure where this is desirable, and whether legislative change is therefore needed to allow such disclosure. The second is whether, where restrictions on disclosure are considered necessary, criminal sanctions are the best way of enforcing confidentiality.

DO PROVISIONS INHIBIT DESIRABLE DISCLOSURE?

8.5 Appendix B demonstrates the wide range of matters on which the State obtains information from individuals and businesses. Many of the restrictions on authorised disclosure reflect the Government's duty to guarantee the confidentiality of information acquired by invasion of privacy.

8.6 In 1972 the Departmental Committee on Section 2 of the Official Secrets Act 1911, chaired by Lord Franks, commented in its report ('the Franks Report') on the need to protect such information:

'A considerable number of the statutes which require the giving of information, or which confer powers of entry or inspection, contain provisions expressly prohibiting unauthorised disclosures of the information obtained in these ways. The principle behind these provisions is that when the State requires the citizen to provide or reveal information which may be of a personal and confidential nature, or which should be kept confidential for commercial reasons, then the State should give the citizen a guarantee that this information will be properly protected There is no argument about the need to protect this information'.⁴

8.7 However, views on what should legitimately be kept confidential change. There is a growing demand for greater disclosure of information where it directly affects the rights or the health or safety of individuals or relates to the quality of the environment. Health alarms, accidents and disasters often prompt questions on whether more information could and should have been available to the public.

8.8 Advocates of a freedom of information act have suggested that the most effective way of dealing with present statutory restrictions would be to set them all aside in favour of a general right of access to information. This has not been the approach adopted overseas, where access laws have usually recognised that a more discriminating approach is appropriate.⁵ Retrospective removal of statutory guarantees of confidentiality raises ethical issues.

8.9 In deciding to support an access right to environmental information and to introduce new access rights in the areas of personal files and health and safety the Government recognises that, in some areas, the legal framework has been too restrictive. The environmental access right overrides statutory disclosure provisions on environmental information where they are more restrictive than its own provisions. The new access rights will operate in a

4 Cmnd 5104, paragraphs 196 and 197.

5 The Australian Freedom of Information Act 1982 specified disclosure provisions which would continue to apply. The Canadian Access to Information Act 1980 did the same, but subject to further review after 3 years. The New Zealand Official Information Act 1982 left all existing disclosure provisions in force, pending a detailed review. In France, the Freedom of Access to Administrative Documents Act 1978 allows access to be refused where it would lead to the disclosure of secrets protected by law.

similar way. The combined effect will be to set aside a significant number of existing provisions where they restrict disclosure in these areas.

8.10 In other areas there are good arguments for leaving existing provisions unchanged.

8.11 One such area is personal privacy. Public authorities hold records on individuals under a wide range of headings. Examples include local government records, such as council house tenancy, adoption and education records; child support, benefit and taxation records; medical records and census information. This White Paper sets out proposals to extend individuals' rights to see their own records. There are, however, valid reasons for maintaining existing protection against unauthorised disclosure to other people.

8.12 In the banking and financial services sector, relaxation of existing statutory protections on unauthorised disclosure of regulatory information would be counter-productive. One reason for this is the important role that 'confidence' plays in this sector. When a bank stops trading, there are inevitably complaints that depositors could and should have been warned of difficulties sooner. Yet, if regulators reveal their concerns prematurely, this can hinder investigations and cause a collapse which might not otherwise have happened.

8.13 Effective regulation in the financial sector in general depends heavily on voluntary information - from employees, members of the public and from overseas regulators. This could be jeopardised by fears that sources will be disclosed. Overseas bodies, in particular, look for strong reassurance on confidentiality and EC Directives in this area tend to reinforce or extend existing constraints on disclosure. These create 'gateways' through which information can be passed from one regulatory authority to another, for example to assist investigation of suspected fraud. Disclosure outside these 'gateways' is an offence. While the law in this area will need to be kept under review to ensure effectiveness, the Government sees no case for relaxing effective protections against unauthorised disclosure.

8.14 A third example is statistical information. Individuals and companies provide government with a range of information on the understanding it will only be published in statistical form. These guarantees must continue to be honoured. The Government believes it would be wrong to reduce existing

levels of protection for unauthorised disclosure. Where information has been collected for purely statistical or research purposes there are no strong arguments for subject access, which would often be difficult to arrange because of the form in which information is kept.

8.15 The above examples illustrate some of the areas where the Government has identified good arguments against change. There are other provisions where the arguments against change are not as strong but where there is little or no evidence that the law itself acts as an obstacle to achieving desirable levels of disclosure. In some cases, the Government believes there may be advantages in altering existing disclosure provisions. Examples include the *Atomic Energy Act 1946*, where the section 11 disclosure provisions are being reviewed with a view to narrowing their scope by amendment or by repeal and replacement, and the *Harbours Act 1964*, where there may be a need to strengthen authorities' discretion to publish information such as Trust Port accounts. In general, however, the Government does not believe that legislative change for its own sake is the answer. There is scope for extending authorised disclosure of information within the terms of existing legislation, and greater openness may be achieved more effectively by administrative means.

8.16 The Government does, however, recognise that there are arguments for a progressive change in the way provisions are drafted. More consistency could and should be introduced, particularly in the use of harm tests in legislation regulating disclosure. Proposals for legislative change in this area are discussed in greater detail in paragraphs 8.36-44 below.

ARE CRIMINAL SANCTIONS NECESSARY?

8.17 Criminal sanctions are used extensively to support existing statutory restrictions on disclosure.

8.18 The Franks Report sets out the rationale for this:

' In our view there are nevertheless proper reasons for maintaining the protection of criminal sanctions. Here is a point where the requirements of government and the interests of the citizen wholly coincide. The Government is requiring more and more information from citizens and bodies. This information is given willingly and frankly only on the assurance, implicit or explicit, that it will be kept confidential. The Government cannot

function effectively without this information. The people have the right to expect their confidences to be safeguarded by the Government. Any breakdown of this trust between Government and people could have considerable adverse repercussions on the government of the country. There is no tension in this sphere between openness and secrecy. Everything points to the need for full and effective protection.¹⁶

8.19 Where information is confidential it is important that it is given adequate protection. Nevertheless, the sheer number of criminal sanctions identified, and the possibility that they have enhanced a 'climate of secrecy', justifies a reexamination of the alternatives.

ALTERNATIVE LEGAL REMEDIES

8.20 The argument for removing or replacing criminal sanctions only holds good if an equally effective alternative exists.

8.21 Although there are alternatives to criminal prosecution of unauthorised disclosure, including disciplinary proceedings and civil actions for breach of confidence, all those examined have some drawbacks which make total reliance on them unsatisfactory.

DISCIPLINARY PROCEEDINGS

8.22 As employers, a public authority would be able to take disciplinary proceedings against an employee who makes an unauthorised disclosure of information.

8.23 The likelihood of being able to dismiss an employee in these circumstances is high and disciplinary proceedings have an important part to play in maintaining the integrity of such confidences.

8.24 However, they have one important limitation. They are effective only against current employees. In themselves, they offer no protection against disclosure by past employees or those carrying out work under contract.

8.25 One result of a decision to rely on disciplinary proceedings might be difficulties in implementing EC Directives, which often require that sanctions for unauthorised disclosure should be enforceable against anyone who discloses, not merely current public authority employees.

6 Cmnd 5104, paragraph 197

CIVIL PROCEEDINGS

8.26 There are various types of civil action which can be taken against individuals making an unauthorised disclosure.

8.27 These can include, in relevant circumstances, action for: breach of fiduciary duty (again, an option for employers where a known employee is involved); breach of contract (where applicable); breach of Crown copyright or breach of confidence. This last option in particular has been considered closely to see whether it could operate as a feasible alternative to criminal sanctions.

8.28 In theory, an action for breach of confidence may be brought by anyone and it is well established in case law that a duty of confidentiality exists in certain circumstances.

8.29 In practice, however, there are drawbacks. The Crown can be in a weaker position than a private person might be to enforce a duty of confidence, as government departments have no private life or personal feelings capable of being hurt by the disclosure. Moreover, damages - an important deterrent - are unlikely to be awarded to the Crown.

8.30 Most of the statutes listed in Annex B protect third party information rather than state or national interests. Considerable efforts are being made to reduce the potential delays, costs and complexity of civil litigation, but small companies or individuals may be concerned that they will not be able to fund the cost of civil proceedings, making them reluctant to bring an action for breach of confidence.

CRIMINAL SANCTIONS

8.31 In practical terms, criminal sanctions have a number of advantages.

8.32 The legal position with regard to criminal sanctions is relatively straightforward - assuming the discloser has been identified. This compares favourably with the more complex position in civil proceedings, where the outcome can be difficult to predict.

8.33 In addition, criminal sanctions offer the same level of protection for all confidential information, whatever the source.

8.34 Finally, in contrast with disciplinary proceedings, provided that the disclosure provision is correctly framed, the sanctions can be used against anyone who discloses - with the exception of overseas nationals outside the UK.

8.35 One potential disadvantage of extensive criminal sanctions relating to unauthorised disclosure of information is the risk of creating an atmosphere of excessive caution about disclosure of any information. We have found no evidence that this is the case. Prosecution, or the threat of prosecution, has rarely been necessary. Removing criminal penalties might create a risk of legal confusion and reduced protection for genuinely confidential information. The need is to confine the coverage of criminal sanctions to the genuinely confidential and to communicate more clearly - both to the general public and to the handlers of the information - where the areas of confidentiality lie.

USE OF HARM TESTS

8.36 In concluding that the criminal law is the most effective form of protection, the Government is also aware of the need to focus that protection more precisely.

8.37 One option is to require the inclusion of **harm tests** in a wider range of these offences. A harm test is a way of ensuring that no-one is penalised for disclosing information if it is not genuinely confidential. It does this by asking whether harm or damage has resulted, or is likely to result, from the disclosure. If the answer is 'no', then a prosecution for unauthorised disclosure of information will not succeed.

8.38 Some existing provisions already contain harm tests. The most notable example is the *Official Secrets Act 1989*, which replaced the sweeping disclosure prohibitions of section 2 of the 1911 *Official Secrets Act* with tightly-drawn restrictions focused on six key areas, all but one of which are subject to detailed harm tests.

8.39 However, harm tests are not included in the majority of disclosure provisions listed at Annex B. It would be a major exercise to write a harm test into all existing statutes. The absence of prosecutions under them confirms that criminal prosecution is not considered lightly or indiscriminately.

8.40 The Government proposes to assess the case for harm tests in all future legislation on disclosure, and to review existing provisions as and

when legislative opportunities arise. The presumption will be in favour of inclusion of a harm test unless there are compelling public interest arguments against it.

8.41 The Government's aim will be to standardise such tests as far as possible, to ensure consistency of approach to disclosure. Common issues might include the likelihood of disclosure endangering individuals' safety or damaging their health; intrusion into personal privacy; significant commercial damage; or more general concerns such as damage to national security, the UK's economic position or international interests, and whether disclosure impedes policy formation or impairs authorities' ability to function effectively. However, the Government also recognises that provisions may need to be tailored to meet different circumstances, and it may not always be possible for provisions to match a standard format.

8.42 Harm tests often allow those who have made an unauthorised disclosure the specific defence that they did not know, or had no reasonable cause to believe, that disclosure would be damaging. It is sometimes argued that other specific defences should be allowed, for example that individuals should be entitled to disclose confidential information where they believe the harm caused by disclosure can be outweighed by greater public benefits, or where the information has already been published.

8.43 The aim of harm tests is to define clearly where the areas of genuine confidentiality lie and to focus the protection of the law on those areas. 'Prior publication' and 'public interest' defences would not help to clarify the obligations of those handling confidential information. Publication may reach a very limited circle of readers and it is wrong to maintain that, because information has already been published, further disclosure cannot be damaging. The Government believes that the courts must be able to consider the crucial issue of whether damage has resulted from the disclosure. A prior publication defence would prevent this. A public interest defence could encourage some individuals to believe that their personal views should override other considerations, leading to inconsistency and confusion, rather than the clearer focus which the Government seeks.

8.44 'Whistleblower's' defences should not be necessary if internal review procedures provide effective ventilation of matters of conscience. In the Civil Service, under the *Armstrong Memorandum*, which is now incorporated into the *Pay and Conditions of Service Code*, there is provision for individuals to appeal on matters of conscience to the Head of the Home Civil Service if an

issue cannot be resolved, as is usually possible, by the line management of the civil servant's own department. In the National Health Service, guidance for staff on relations with the public and the media has recently been published which encourages a climate of openness and dialogue where the free expression of concerns by staff is welcomed and encouraged by managers as a contribution to improving service quality. The guidance emphasises that this must be done reasonably and with proper regard to principles of confidentiality of patient information, and also confidentiality of the employer, which the guidance explains.

CHAPTER 9

PUBLIC RECORDS

9.1 It is the Government's intention that public records should be released after 30 years in accordance with the provisions of the Public Record Acts⁷ unless there are justifiable reasons to withhold them. This part of the White Paper sets out the procedures which will be followed in future by those with responsibility for the management of public records, with a view to releasing more material into the public domain. Arrangements in respect of Scottish and Northern Ireland public records are set out in paragraph 9.6 below.

9.2 In future more information will be released through changes in the criteria governing decisions to withhold material for longer than 30 years; through a reduction in the periods for which such material can be withheld, and new operational measures in the management of departmental records.

PROVISIONS OF THE PUBLIC RECORDS ACTS

9.3 Under the *Public Records Act 1958* public records were normally made available for inspection in the Public Record Office (PRO) when they had been in existence for 50 years. The *Public Records Act 1967* reduced this period to 30 years.

9.4 The Act also makes provision for material to be made available for public inspection, with the approval of the Lord Chancellor, when it has been in existence for periods longer or shorter than 30 years. Consideration has been given to the more flexible use of the Acts, and to whether the 30 year period should itself be reduced.

9.5 A thirty year period is now the standard adopted by the countries of the European Community. Those countries which, until recently, have withheld records for longer initial periods are moving towards 30 years as the acceptable minimum. Retention of the overall 30 year period therefore seems appropriate and sensible.

9.6 The legislation governing public records in Scotland and Northern Ireland does not make any legal provision for public access to them similar to that made in relation to UK public records in the *Public Records Act 1958*. It has however been the practice for access to be granted in the Scottish

7 For UK departments, *Public Records Acts 1958 and 1967* for Scotland, *Public Records (Scotland) Act 1937* for Northern Ireland, *Public Records Act (Northern Ireland) 1923*

Record Office (SRO) or the Public Record Office of Northern Ireland (PRONI) by means of administrative arrangements which parallel those made for UK public records under UK legislation. The Government's intention is that the revised arrangements proposed in this Chapter should apply also to them. Throughout this Chapter, wherever reference is made to the Public Records Acts or to the Lord Chancellor as the Minister responsible for administering them, it should be understood that similar references are intended to the Secretary of State for Scotland and to the Secretary of State for Northern Ireland.

THE SYSTEM

9.7 Departmental records are the responsibility of the Minister in charge of each department. A Departmental Record Officer (DRO) is responsible to the Minister for the management of the records under the provisions of the Public Records Acts from the time they are created to the time they are transferred to the PRO. Departmental procedures vary but in general those records which are not scheduled for automatic destruction after a fixed period of time as being ephemeral are subject to two reviews which are carried out by the DRO and his staff under the guidance of the PRO. The 'First Review' - carried out five years after a departmental file is closed and ceases to have papers added to it - determines whether the file is likely to be of continuing administrative use to the department or merits preservation on other, say, historical, grounds. If not, it is destroyed; otherwise it is preserved and undergoes 'Second Review' after 25 years to determine whether it should continue to be preserved as of permanent value and, if preserved, whether it should be released after 30 years or withheld for longer than 30 years. In the 35 largest Government departments some 155,000 feet (or 30 miles) of records are given 'First Review' in a year, and 23,000 feet (4 $\frac{1}{3}$ miles) are subject to 'Second Review'; the PRO takes in some 5 - 6,000 feet each year.

9.8 Records may be withheld for longer than 30 years under two provisions of the *Public Records Act 1958*.

- (i) Section 5(1) allows for records to be closed in the PRO for a prescribed period in accordance with agreed criteria. Of the 91 miles of records at the PRO at Kew only between 1 and 2 per cent are closed under Section 5(1). Four classes of records alone make up a large proportion of the PRO's holding of closed records; they are the 1901 and 1911 population census returns,

items amongst the Ministry of Pensions World War I war pensions awards files and the Inland Revenue Stamps and Taxes Division registered files.

(ii) Section 3(4) makes provision for records to be retained in Departments for administrative reasons or for a special reason which the Lord Chancellor has approved. The special reason is almost always that the records fall into a category for which the Lord Chancellor has granted 'blanket' exemption from release on grounds of continuing sensitivity. This is explained in greater detail in paragraph 9.23 below.

9.9 Records which have been transferred to the PRO may be returned to the department from which they were transferred under Section 4(6) of the *Public Records Act 1958*. Departments 'borrow' records under this provision for a variety of administrative reasons, for example, to assist officials in the drafting of replies to Parliamentary Questions or for research for the purpose of writing Official Histories. The fact of the records being 'on loan to the department' does not affect their status as open records and if a member of the public wishes to see them the PRO will arrange for them to be returned or for a date to be given by which they will be returned.

CLOSURE

9.10 The criteria governing the closure of records were last considered by a Committee under the Chairmanship of Sir Duncan Wilson GCMG. The Committee's Report *Modern Public Records* was published in 1981 (Cmnd 8204). In its response (Cmnd 8531) the Government accepted the Committee's recommendation that henceforth departments would be permitted to close records for longer than 30 years if they:

- are exceptionally sensitive and their disclosure would be contrary to the public interest;
- contain information supplied in confidence;
- contain information about individuals, the disclosure of which would cause distress to or endanger living persons or their immediate descendants;

9.11 In June 1992 the Lord Chancellor, Lord Mackay of Clashfern, set in train a review of these criteria. The review has concluded that records should always be released unless such release would harm national security, international relations, defence, or the economic interests of the UK; or if they reveal information that was given in confidence or which would distress or endanger individuals who are affected by the disclosure or their descendants.

9.12 As a result of a recommendation of the review group, in future it will be a condition for retention that the release of records would cause actual harm. Applications by Departments to the Lord Chancellor for permission to close records for longer than 30 years will, therefore, in future be informed by the guiding principle that:

“All records not retained in departments should be released after 30 years unless a) it is possible to establish the actual damage that would be caused by release, and b) that the damage falls within the criteria set out below”

9.13 The new first criterion as recommended by the Lord Chancellor’s review group and accepted by the Government defines the term ‘public interest’ contained in paragraph 9.10 above and reads as follows:

“Exceptionally sensitive records containing information, the disclosure of which would not be in the public interest **in that** it would harm defence, international relations, national security (including the maintenance of law and order) or the economic interests of the UK and its dependent territories”;

9.14 Examples of records closed for longer than 30 years under the first criterion are those which:

- refer to possible plans for intervention in a foreign state;
- concern security or defence of a UK Dependent Territory, where release would jeopardise the security of the territory concerned;
- comment on an unresolved border or territorial dispute, not necessarily one directly involving the UK; or
- comment adversely on leaders of, or the internal affairs of, foreign states.

9.15 The second criterion permits the closure for longer than 30 years of material which has been provided to the Government in confidence:

“Documents containing information supplied in confidence the disclosure of which would or might constitute a breach of good faith.”

9.16 Examples of such documents are :

- those which contain information obtained in confidence which contain unsubstantiated allegations of dishonesty or criminal activity, or which reveal the identity of a witness who gave information in confidence and wished to remain anonymous;
- personal tax information;
- personal (eg character) references;
- papers on unresolved commercial disputes, where release of information could prejudice negotiations or breach commercial confidentiality.

9.17 The purpose of the third criterion is to protect sensitive personal information about individuals, the disclosure of which would cause either substantial distress or danger. It now reads as follows:

"Documents containing information about individuals the disclosure of which would cause either:

substantial distress, or

endangerment from a third party, to persons affected by disclosure or their descendants."

9.18 Examples of such documents are:

- those which contain unsubstantiated allegations against individuals, or which
- give details of rape victims (identity protected by *Criminal Justice Act 1988*), or

- reveal to third parties sensitive medical or other personal information.

9.19 Because of the high degree of subjectivity involved in determining whether release of a record **would** cause distress, detailed guidance is to be given to reviewers in departments to enable them to assess the element of distress.

9.20 Further details of the above criteria and the nature of the records they cover, together with the recommended closure periods (see paragraph 9.21 below) are to be found at Annex C.

9.21 As part of the Lord Chancellor's review, consideration was given to closure periods. Previously, if a record was not released after 30 years it was closed for 50, 75 or 100 years, thus 20 years might elapse before a closed record was either released or re-reviewed. This period is now considered to be too long as a general rule. In future records closed under the first criterion (see paragraph 9.13 above) will be reconsidered after ten years. If the sensitivity which has caused the record to be closed for longer than 30 years has passed it will be released at that point; if it has not, the process will be repeated after ten years and every ten years thereafter until the record becomes releasable. It is not, however, generally practicable to extend this ten-year review to records closed under the second and third criteria. This is because closure under the first criterion is dependent upon circumstances which may well change whereas closure on grounds of, say, personal sensitivity is mainly dependent upon the age of the person concerned and likely life expectancy. It would be impracticable to review, say, all NHS medical records or DSS benefit files every ten years. The guidelines at Annex C show the recommended closure periods. Records now to be closed for 100 years are:

- the decennial census of population (census returns are completed by the public on the explicit assurance that such records will not be released for this period of time);
- those containing information from which it is likely that a woman could be identified as a rape victim (*Criminal Justice Act 1988*);
- those containing personally sensitive information which would substantially distress or endanger individuals or their descendants (in areas where it is necessary to protect generations of descendants this may amount to 100 years or even more).

9.22 Records relating to the Royal Family will be treated in the same way as all other records and only closed for longer than 30 years if they fall into one or more of the three criteria governing closure.

RETENTION

9.23 As stated in paragraph 9.8 (ii) above the Public Records Act makes provision for records to be retained by departments. There are two main categories of records which are retained rather than closed. These are, first, records which are retained for administrative reasons, usually because they are awaiting review, or are in constant use. There are secondly, records whose sensitivity is such that no date can be put on their potential release, most of which fall into one of the categories for which the Lord Chancellor has given 'blanket' approval to retain.

These categories are:

- Security and intelligence material (renewed in February 1992);
- Civil and Home Defence material (now under review);
- Atomic Energy - pre-1956 defence-related material (now under review);
- Atomic Energy - post 1956 defence-related material (to be reviewed in 2006);
- Personal records of civil servants - retained for administrative purposes.

9.24 Records retained by departments for other than administrative reasons are subject to regular review ie at least every ten years and, in the same way as closed records, subject to the test of 'actual damage' caused by release. Thus when the sensitivity has passed the record will be released.

EXPLANATION OF THE REASONS FOR CLOSURE/RETENTION

9.25 Hitherto when records have had to be closed for longer than 30 years or retained by departments no reason has been given other than to say that the provisions of the *Public Records Act 1958* permit such closure or retention in accordance with agreed criteria. This is because Governments

have taken the view that to say more could endanger the very information that closure or retention seeks to protect. It has been the practice of successive Administrations not to disclose the contents of records withheld from public release.

9.26 The contents of withheld records must continue to be protected but, in future, departments will, in response to queries about closed or retained records, say which of the following reasons applies and give such other information as is appropriate if this can be done without putting at risk the information which has led to the material being withheld. The reasons, as shown above, for which records are closed or retained for longer than 30 years are:

- administrative (eg to allow the reviewing process to be completed);
- national security;
- international relations/defence/economic;
- material given in confidence;
- personal sensitivity (would substantially distress or endanger persons affected by disclosure or their descendants).

9.27 The Security and intelligence 'blanket' referred to above permits the records of the security and intelligence agencies themselves to be withheld with the Lord Chancellor's approval. This is because the agencies depend for their effectiveness on maintaining the confidentiality both of their methods of operations which, despite the passage of time, are still extant, and, most of all, of the identities of people who put themselves at risk in the service of the State. However, papers originating in the agencies which have been held in other departments over the years (ie 'intelligence-related' documents) and often reflect the product of the agencies' operations, are reviewed as part of the normal procedures and released if they are no longer sensitive.

ADDITIONAL MEASURES TO RELEASE MORE RECORDS

9.28 In addition to implementing the recommendations of the Lord Chancellor's review group, all departments will, as resources can be made available:

- re-review all material currently withheld for longer than 30 years to see whether its sensitivity has passed and to release it, if possible;
- use the 'blinking out' procedure by which sensitive names, phrases, paragraphs can be extracted from a copy of a document to enable it to be released, or a page deleted from a file and a 'dummy' inserted, to enable the file to be released; the originals will be preserved and subjected to the above review procedure;
- give consideration to blocks of records which, although not 30 years old, may be releasable;
- consider *ad hoc* requests from historians made as a result of the Chancellor of the Duchy of Lancaster's invitation to let him know of blocks of records closed for longer than 30 years which they consider should be released.

Core guidance will be drawn up to reflect the changes referred to in this White Paper and will be disseminated to all Government Departments.

LORD CHANCELLOR'S ADVISORY COUNCIL

9.29 In addition to the review of criteria and retention of records, the Lord Chancellor has also given consideration to the role of the Advisory Council which is set up under Section 1(2) of the *Public Records Act 1958*, under the Chairmanship of the Master of the Rolls, to advise the Lord Chancellor on matters concerning public records in general and, in particular, on those aspects of the work of the Public Record Office which affect members of the public who make use of its facilities.

9.30 At present the Advisory Council sees applications to the Lord Chancellor from departments for the closure of records under Section 5(1) of the *Public Records Act*. In future the Advisory Council will also see applications from departments for the retention of records under Section 3(4) of the Act. The Advisory Council will also advise the Lord Chancellor on requests for the release of records made by historians and other members of the public which departments reject. The role of the Advisory Council, as its name implies, will however remain advisory; the final responsibility for the release or otherwise of departmental records rests with Ministers.

SUMMARY

9.31 In the furtherance of the policy of greater openness, this section of the White Paper provides information about the way records are managed in Government Departments and places the emphasis firmly on release rather than retention (paragraphs 9.2 and 9.12).

9.32 In future more releases will result from the strict application of:

- the guiding principle (paragraph 9.12),
- the revised criteria (paragraphs 9.13 - 9.18 and Annex C),
- the additional measures to be adopted (paragraph 9.28).

9.33 Earlier release will result from:

- revised closure periods (paragraph 9.21 and Annex C),
- additional measures (paragraph 9.28).

9.34 The provision of detailed guidance to departments (paragraphs 9.19 and 9.28) will help reviewers and members of departmental Records Sections to make better informed decisions on the release of records and reviewers will be required to justify their recommendations to Departmental Record Officers and the Public Record Office's Inspecting and Document Officers who, through the senior staff of the PRO, will need to convince the Lord Chancellor's Advisory Council (paragraphs 9.29 and 9.30) and the Lord Chancellor himself of the need to withhold records for longer than 30 years.

9.35 This White Paper provides information about the way records are managed in Government Departments, what aspects have been reviewed, and what improvements are proposed. It is hoped that this will promote greater understanding between those who wish to use the records and those who deal with them before they become publicly available, and that the dialogue which began last year following the Chancellor of the Duchy of Lancaster's invitation to historians to let him know of records they wished to have released will continue. Much work has been done over the last year to release the previously withheld records - examples shown at Annex D.

9.36 'Release' is the watchword rather than 'retain'. The new and more exacting criteria for withholding records for longer than 30 years will release much more information into the public domain.

ANNEX A

**DRAFT CODE OF PRACTICE ON GOVERNMENT
INFORMATION****PURPOSE**

1. This Code of Practice supports the Government's policy of extending access to official information, and responding to reasonable requests for information except where disclosure would not be in the public interest, as specified in Part II of this Code.
2. The aims of the Code are:
 - to improve policy-making and the democratic process by extending publication of the facts and analyses which provide the basis for the consideration of proposed policy;
 - to protect the interests of individuals and companies by ensuring that reasons are given for administrative decisions, except where there is statutory authority or established convention to the contrary;⁸
 - to support and extend the principles of public service established under the Citizen's Charter. Those particularly relating to openness include:
 - publication of explicit standards of service;
 - openness about how public services are run, how much they cost, who is in charge, and whether or not they are meeting their standards;
 - full, accurate and where possible comparable information, to be readily available in plain language, about what services are being provided, what targets are set, and the results achieved;
 - well-published and readily-available complaints procedures to provide explanation, apology and, where appropriate, redress when things go wrong.

⁸ As for example with decisions not to prosecute, or decisions on citizenship applications, see s44 (2) of the *British Nationality Act 1981*, or certain decisions on merger and takeover matters.

- to maintain high standards of care in ensuring the privacy of personal and commercially confidential information;
- to preserve confidentiality only where disclosure would not be in the public interest or would breach personal privacy or the confidences of a third party, in accordance with statutory requirements and Part II of the Code.

INFORMATION THE GOVERNMENT WILL RELEASE

3. Subject to the exemptions in Part II, the Code commits Departments:

- (i) to publish the facts and analysis of the facts which the Government considered relevant and important in framing major policy proposals and decisions; such information will normally be made available when policies and decisions are announced; and
- (ii) to release in response to specific requests factual information related to their areas of responsibility.

4. Except in circumstances specified in Part II of this Code, reasonable requests for information relating to the policies, actions or decisions of departments and public authorities within the scope of the Code will be met. There is no presumption that pre-existing documents, as distinct from information, will be made available. The Code does not require departments to acquire information they do not possess, to provide information which is already published, to provide material which the Government did not consider to be reliable information, or to provide information which is provided as part of an existing charged service other than through that service.

RESPONSES TO REQUESTS FOR INFORMATION

5. Responses to requests for information will be given within a reasonable time, and where information cannot be provided under the terms of the Code, an explanation will normally be given. Information will be provided as soon as practicable. The target for response to simple requests for information will normally be twenty working days, but this may be extended when significant search or collation of material is required.

6. As soon as practicable after this Code becomes operational, each department will make publicly available its guidance to officials in their dealings with the public on matters within the jurisdiction of the Parliamentary Commissioner for Administration, including rules, procedures, and similar administrative manuals, except where publication would prejudice any matter which is confidential under Part II of the Code.

CHARGES

7. Departments will make their own arrangements for charging. It may be that a standard charge will be made for processing simple requests for information. Where a request is complex and would require extensive searches of records or processing or collation of information, an additional charge, reflecting reasonable costs, may be notified to the applicant and is payable before further work is undertaken.

SCOPE

8. The Code applies to those Government departments and other bodies within the jurisdiction of the Parliamentary Commissioner for Administration (as listed in Schedule 2 to the *Parliamentary Commissioner Act 1967*). The Code applies to actions and decisions of agencies within departments and contractors acting on behalf of a department, as it applies to the actions or decisions of the department.

INVESTIGATION OF COMPLAINTS

9. Complaints that information which should have been provided under the Code has not been provided should be made first to the department or body concerned. If the applicant remains dissatisfied, complaints may be made through a Member of Parliament to the Parliamentary Commissioner for Administration⁹. Complaints will be investigated at the Commissioner's discretion in accordance with the procedures provided in the 1967 Act.

⁹ Separate arrangements will apply in Northern Ireland, because of the differing procedures and jurisdiction of the Northern Ireland Ombudsman.

PART II : REASONS FOR CONFIDENTIALITY

The following categories of information are exempt from the commitments to provide information in this Code. The exemptions will not be interpreted in a way which causes injustice to individuals. References to harm include both actual harm and risk or reasonable expectation of harm.

i) Defence, security and international relations:

Information whose disclosure would harm national security or defence.

Information whose disclosure would harm the conduct of international relations or affairs. Information received in confidence from foreign governments, courts or international organisations.

ii) Internal discussion and advice:

Information whose disclosure would harm the frankness and candour of internal discussion, including:

- proceedings of Cabinet and Cabinet committees;
- internal opinion, advice, recommendation, consultation and deliberation;
- projections and assumptions relating to internal policy analysis; analysis of alternative policy options and information relating to rejected policy options;
- confidential communications between departments or public bodies including regulatory bodies.

iii) Communications with the Royal Household:

Information relating to confidential communications between Ministers and Her Majesty the Queen or other Members of the Royal Household, or relating to confidential proceedings of the Privy Council.

iv) *Law enforcement and legal proceedings:*

Information whose disclosure could prejudice the administration of justice, including fair trial and the enforcement or proper administration of the law.

Information whose disclosure would be likely to prejudice the prevention, investigation or detection of crime, the apprehension or prosecution of offenders, or the security of any penal institution.

Information covered by public interest immunity or legal professional privilege, or which could prejudice legal proceedings, public inquiries or other formal investigations or proceedings (whether actual or prospective) or whose disclosure is, has been or is likely to be addressed in the context of such proceedings. This includes information relating to proceedings which have been completed or discontinued, or relating to investigations which have or might have resulted in proceedings.

Information whose disclosure would harm public safety or public order.

Information which could endanger the life or physical safety of any person, or identify the source of information given in confidence for law enforcement or security purposes.

Information whose disclosure would increase the likelihood of damage to the environment, or rare or endangered species and their habitats.

v) *Immigration and nationality:*

Information relating to immigration, nationality, consular work and entry clearance cases.

vi) *Effective management of the economy and collection of tax:*

Information whose disclosure would harm the ability of the Government to manage the economy, prejudice the conduct of official market operations, or could lead to improper gain or advantage.

Information whose disclosure would prejudice the assessment or collection of tax or duties, or assist tax avoidance or evasion.

vii) *Effective management and operations of the public service:*

Information whose disclosure could lead to improper gain or advantage or could reasonably be expected to prejudice:

- the competitive position of a department or other public authority;
- negotiations or the effective conduct of personnel management, or commercial or contractual activities;
- the awarding of discretionary grants.

Information whose disclosure would harm the proper and efficient conduct of the operations of a department or other public body or authority, including regulatory bodies and NHS organisations.

viii) *public employment, public appointments and honours;*

Personnel records (relating to public appointments as well as employees of public authorities) including those relating to recruitment, promotion and security vetting.

Information, opinions and assessments given in confidence in relation to public employment and public appointments.

Information, opinions and assessments given in relation to recommendations for honours.

ix) *Unreasonable, voluminous or vexatious requests:*

Requests for information which are manifestly unreasonable or are formulated in too general a manner, or which (because of the amount of information to be processed or the need to retrieve information from files not in current use) would require unreasonable diversion of resources.

x) *Publication and prematurity in relation to publication:*

Information which is or will soon be published, or whose disclosure would be premature in relation to a proposed announcement or publication.

xi) *Research, statistics and analysis:*

Information relating to incomplete analysis, research or statistics, or information whose disclosure could be misleading or deprive the holder of priority of publication or commercial value.

Information held only for preparing statistics or carrying out research, and which relates to individuals or companies who will not be identified in reports of that research or in published statistics.

xii) *Privacy of an individual:*

Unwarranted disclosure to a third party of personal information about any person (including a deceased person) or any other disclosure which would constitute or could facilitate an unwarranted invasion of privacy.

xiii) *Third party's commercial confidences:*

Information including commercial confidences, trade secrets or intellectual property whose unwarranted disclosure would harm the competitive position of a third party.

xiv) *Information given in confidence:*

Information held in consequence of having been supplied in confidence by a person who:

- gave the information under a statutory guarantee that its confidentiality would be protected; or
- was not under, and could not have been put under, any legal obligation to supply it; and
- has not consented to its disclosure.

Information provided in confidence by a medical practitioner who has expressed the view that disclosure of the information would be injurious to the person's health or welfare.

xv) *Statutory and other restrictions:*

Information whose disclosure is prohibited by or under any enactment, regulation, European Community law or international agreement.

Information which could not be sought in a Parliamentary Question, or whose release would constitute a breach of Parliamentary Privilege.

ANNEX B

LIST OF STATUTORY PROVISIONS CONCERNING DISCLOSURE OF INFORMATION

Part I of this Annex lists primary and secondary legislation identified as prohibiting the disclosure of information held by public authorities. Part II lists primary and secondary legislation identified as containing a discretion to disclose. Both exclude access rights and legislation requiring publication through public registers.

PART I: STATUTORY PROVISIONS PROHIBITING THE DISCLOSURE OF OFFICIAL INFORMATION

PRIMARY LEGISLATION

Abortion Act 1967, section 2
 Adoption Act 1976, sections, 50 and 51A
 Adoption (Scotland) Act 1978, section 45
 Adoption (NI) Order 1987, articles 50 and 61
 Agricultural Marketing Act 1958, section 47 (as amended)
 Agricultural Marketing (NI) Order 1982, article 29
 Agricultural Produce (Meat Regulation and Pig Industry)
 (NI) Act 1962, section 15
 Agricultural Returns Act (NI) 1939, section 1
 Agricultural Statistics Act 1979, section 3
 Agriculture Act 1967, section 24
 Agriculture Act 1970, section 83 and 108
 Agriculture and Horticulture Act 1964, section 13
 Aircraft and Shipbuilding Industries Act 1977, section 52
 Air Force Act 1955, section 60
 Airports Act 1986, section 74
 Anatomy Act 1984, section 10
 Animals (Scientific Procedures) Act 1986, section 24
 Army Act 1955, section 60
 Atomic Energy Act 1946, sections 11 and 13

Banking Act 1987, sections 82 and 86
 Betting, Gaming and Lotteries Act 1963, section 28
 Biological Standards Act 1975, section 5
 Births and Deaths Registration (NI) Order 1976, article 17
 Broadcasting Act 1990, sections 196 and 197
 Building Act 1984, section 96
 Building Regulations (NI) Order 1979, article 11
 Building (Scotland) Act 1959, section 18
 Building Societies Act 1986, section 53

Census Act 1920, section 8 (as amended)
 Census Act (NI) 1969, sections 6 and 7
 Census (Confidentiality)(NI) Order 1991, article 3
 Cereals Marketing Act 1965, section 17
 Child Support Act 1991, section 50
 Child Support (NI) Order 1991, article 46
 Civil Aviation Act 1982, section 23
 Civil Defence Act 1948, section 4
 Clean Air Act 1993, section 49
 Coal Act 1938, section 53 (as amended)
 Coal Industry Nationalisation Act 1946, section 56
 Coastal Protection Act 1949, section 25
 Commissioner for Complaints Act (NI) 1969, section 12
 Companies Act 1985, section 449
 Companies Act 1989, section 86
 Companies (NI) Order 1986, article 442
 Company Securities (Insider Dealing) Act 1985, sections 1, 2, 4 and 5
 Company Securities (Insider Dealing)(NI) Order 1986, articles 11 and 16B
 Competition Act 1980, section 19
 Consumer Credit Act 1974, section 174
 Consumer Protection (NI) Order 1987, article 29
 Consumer Protection Act 1987, section 38
 Control of Pollution Act 1974, sections 79 and 94 (as amended)
 Courts and Legal Services Act 1990, section 49
 Covent Garden Market Act 1961, section 32

Deep Sea Mining (Temporary Provisions) Act 1981, section 13
 Diseases of Fish Act 1983, section 9

Education (Student Loans) Act 1990, Schedule 2(4)
 Electricity Act 1989, sections 57 and 98
 Electricity (NI) Order 1992, articles 59 and 61
 Employment Agencies Act 1973, section 9
 Employment and Training Act 1973, section 4 (as amended)
 Energy Act 1976, Schedule 2(7)
 Energy Conservation Act 1981, section 20
 Enterprise and New Towns (Scotland) Act 1990, sections 9 and 11
 Environmental Protection Act 1990, Schedule 3(3)
 Estate Agents Act 1979, section 10
 European Communities Act 1972, section 11

Factories Act 1961, section 154
 Factories Act (NI) 1965, section 154
 Fair Employment (NI) Act 1989, sections 5, 19 and 30
 Fair Trading Act 1973, sections 30 and 133
 Film Levy Finance Act 1981, section 8
 Finance Act 1989, section 182
 Financial Services Act 1986, section 179
 Fire Precautions Act 1971, section 21

Fire Services (NI) Order 1984, article 41
 Fisheries Act 1981, section 12
 Fisheries Act (NI) 1966, section 18
 Flood Prevention (Scotland) Act 1961, section 10
 Food (NI) Order 1989, section 47
 Food Safety Act 1990, sections 25 and 32
 Food Safety (NI) Order 1991, article 33
 Friendly Societies Act 1992, section 63

Gas Act 1965, Schedule 6(9)
 Gas Act 1986, section 42

Hallmarking Act 1973, section 9
 Harbours Act 1964, section 46
 Health and Safety at Work etc Act 1974, sections 27 and 28
 Health and Safety at Work (NI) Order 1978, articles 29 and 30
 Highways Act 1980, section 292
 Horticulture Act (NI) 1966, section 29
 Human Fertilisation and Embryology Act 1990, section 33 (as amended)

Industrial Organisation and Development Act 1947, section 5
 Industrial Training Act 1982, section 6
 Industrial Training (NI) Order 1984, section 28
 Industry Act 1975, section 33
 Insurance Companies Act 1982, section 47A
 Interception of Communications Act 1985, Schedule 1(4)
 Iron and Steel Act 1982, section 33

Land Development Values (Compensations) Act (NI) 1965, section 40
 Land Drainage Act 1991, section 70
 Legal Aid Act 1988, section 38
 Legal Aid (Scotland) Act 1986, section 34
 Legal Aid, Advice and Assistance (NI) Order 1981, article 24
 Livestock Marketing Commission Act (NI) 1967, section 4
 Local Government Act 1974, sections 30 and 32
 Local Government Finance Act 1982, section 30 (as amended)
 Local Government Finance Act 1992, sections 21 and 86
 Local Government (Miscellaneous Provisions) Act 1976, section 15
 Local Government, Planning and Land Act 1980, section 167 and Schedule 20(16)
 Local Government (Scotland) Act 1975, sections 27 and 30
 London Building Acts (Amendment) Act 1939, section 142
 London County Council (General Powers) Act 1949, section 35
 London County Council (General Powers) Act 1957, section 58

Magistrates Courts (NI) Order 1981, article 90
 Marketing of Eggs Act (NI) 1957, section 16
 Marketing of Potatoes Act (NI) 1964, sections 10 and 13
 Medicines Act 1968, section 118
 Mental Health Act 1983, section 103

Merchant Shipping Act 1974, sections 3 and 14
 Merchant Shipping (Liner Conferences) Act 1982, section 10

National Health Service Act 1977, Schedules 11 and 13
 National Health Service (Scotland) Act 1978, Schedule 10
 National Savings Bank Act 1971, section 12
 Naval Discipline Act 1957, section 34
 Northern Ireland (Emergency Provisions) Act 1991, Schedule 5
 Nuclear Installations Act 1965, section 24

Office and Shop Premises Act (NI) 1966, section 56
 Offices, Shops and Railway Premises Act 1963, section 59
 Official Secrets Act 1911, sections 1 and 2 (as amended by Official Secrets Act 1989)
 Offshore Safety Act 1992, section 5

Parliamentary Commissioner Act 1967, sections 8 and 11
 Parliamentary Commissioner Act (NI) 1969, section 11
 Planning (Hazardous Substances) Act 1990, section 36B
 Planning (Listed Buildings and Conservation Areas) Act 1990, section 88B
 Planning (NI) Order 1991, article 122
 Police and Criminal Evidence Act 1984, section 98
 Police (NI) Order 1987, article 18
 Population (Statistics) Act 1938, section 4 (as amended)
 Post Office Act 1969, section 65
 Post Office (Data Processing Services) Act 1967, section 2
 Prevention of Terrorism (Temporary Provisions) Act 1989, section 17
 Prices Act 1974, Schedule (12)
 Property Misdescriptions Act 1991, Schedule (7)
 Public Health (Control of Disease) Act 1984, section 62

Race Relations Act 1976, section 52
 Radioactive Substances Act 1993, sections 34 and 39
 Radioactive Materials (Road Transport) Act 1991, section 5
 Rehabilitation of Offenders Act 1974, section 9
 Rehabilitation of Offenders (NI) Order 1978, article 10
 Rent (Agriculture) Act 1976, section 30
 Representation of the People Act 1983, section 66 (and Schedule 1)
 Restrictive Trade Practices Act 1976, section 41
 Rivers (Prevention of Pollution) Act 1961, section 12
 Rivers (Prevention of Pollution)(Scotland) Act 1965, section 11
 Road Traffic Regulations Act 1984, section 43

Salmon & Freshwater Fisheries (Protection)(Scotland) Act 1951, section 15
 Sea Fish Industry Act 1970, section 14
 Sewerage (Scotland) Act 1968, section 50
 Sex Discrimination Act 1975, section 61
 Sex Discrimination (NI) Order 1976, article 61
 Slaughterhouses Act (NI) 1953, section 5
 Social Security Administration Act 1992, section 123

Social Security Administration (NI) Act 1992, section 116
 Social Security Contributions and Benefits Act 1992, section 16
 Social Security (NI) Order 1989, article 21 and Schedule 2 (as amended)
 Social Work (Scotland) Act 1968, section 58
 Statistics of Trade Act 1947, section 9
 Statistics of Trade and Employment Order (NI) 1988, articles 7 and 8 (as amended)
 Statutory Water Companies Act 1991, section 16
 Supply Powers Act 1975, section 5

Taxes Management Act 1970, section 6 (and Schedule 1)
 Telecommunications Act 1984, sections 45 and 101
 Timeshare Act 1992, Schedule (5)
 Town and Country Planning Act 1990, sections 196, 325 and Schedule 15(14)
 Town and Country Planning (Scotland) Act 1972, sections 91C, 97B and C and 266
 Trade Descriptions Act 1968, section 28
 Trade Marks Act 1938, section 28 and 58D
 Transport Act 1968, section 87
 Transport Act (NI) 1967, section 36

Video Recordings 1984, section 16A

Water Act 1989, section 174 (as amended)
 Water Act (NI) 1972, section 24
 Water and Sewerage Services (NI) Order 1973, article 52
 Water Industry Act 1991, section 206 and Schedule 6(5)
 Water Resources Act 1991, sections 204 and 205
 Water (Scotland) Act 1980, section 38
 Weights and Measures Act 1985, sections 64 and 79
 Weights and Measures (NI) Order 1981, articles 36 and 41
 Wireless Telegraphy Act 1949, sections 5 and 15

SECONDARY LEGISLATION

Abortion Regulations 1991 (SI 1991/499) regulation 5
 Abortion (Scotland) Regulations 1991 (SI 1991/460) regulation 5
 Act of Sederunt, Adoption of Children 1984 (SI 1984/1013) rules 9 and 24
 Adoption Agencies Regulations 1983 (SI 1983/1964) regulation 14
 Adoption Agencies Regulations (NI) 1989 (SR 1989/253) regulation 14
 Adoption Agencies (Scotland) Regulations 1982 (SI 1982/34) regulation 17
 Adoption Agencies (Scotland) Regulations 1984 (SI 1982/988) regulation 24
 Adoption Rules 1984 (SI 1984/265) rule 53
 Alcoholometers and Alcohol Hydrometers (EEC Requirements) Regulations 1977
 (SI 1977/1753) regulation 13
 Arrangements for Placement of Children (General) Regulations 1991
 (SI 1991/890) regulations 9 and 10
 Calibration of Tanks of Vessels (EEC Requirements) Regulations 1975
 (SI 1975/2125) regulation 9

- Child Support Commissioners (Procedure) Regulations (NI) 1993
(SR 1993/42) regulation 22
- Community Health Councils Regulations 1985 (SI 1985/304) regulation 20
- Construction Products Regulations 1991 (SI 1991/1620) regulation 25
- Construction Plant and Equipment (Harmonisation of Noise Emission Standards) Regulations 1985 (SI 1985/1968) regulation 4
- Construction Plant and Equipment (Harmonisation of Noise Emission Standards) Regulations 1988 (SI 1988/361) regulation 4
- Control of Industrial Major Accident Hazards Regulations 1984
(SI 1984/1902) regulation 13
- Control of Industrial Major Accident Hazards Regulations (NI) 1985
(SR 1985/175) regulation 13
- Control of Misleading Advertisements Regulations 1988 (SI 1988/915) regulation 7
- County Courts Rules (NI) 1981 (SR 1981/225) (as amended) rule 32
- Criminal Appeal (Reference of Points of Law) (NI) Rules 1973 (SR 1973/428) rule 6
- Education (Special Educational Needs) Regulations (SI 1983/29) regulation 11
- Electromagnetic Compatibility Regulations 1992 (SI 1992/2372) regulation 97
- Electrically, Hydraulically and Oil-Electrically Operated Lifts (Components) (EEC Requirements) Regulations 1991 (SI 1991/2748) regulation 3
- Falling-object Protective Structures for Construction Plant (EEC Requirements) Regulations 1988 (SI 1988/363) regulation 4
- Fossil Fuel Levy Regulations 1990 (SI 1990/266) regulation 36
- Foster Placement (Children) Regulations 1991 (SI 1991/910) regulation 14
- Genetically Modified Organisms (Contained Use) Regulations 1992
(SI 1992/3217) regulation 15
- Magistrates' Courts (Adoption) Rules 1984 (SI 1984/611) rule 5 and 32
- Measuring Container Bottles (EEC Requirements) Regulations 1977
(SI 1977/932) regulation 8
- Measuring Instruments (EEC Requirements) Regulations 1988 (SI 1988/186) regulation 26
- Milk Marketing Boards (Special Conditions) Regulations 1981 (SI 1981/322) regulation 7
- National Savings Stock Register Regulations 1976 (SI 1976/2012) regulation 57
- National Health Service (General Medical Services) Regulations 1992 Schedule 2(50)
- National Health Service (Venereal Diseases) Regulations 1974 (SI 1974/29) regulation 2
- Natural Mineral Waters Regulations 1985 (SI 1985/71) regulation 17
- Non-automatic Weighing Instruments (EEC Requirements) Regulations 1992
(SI 1992/1579) regulation 38
- Notification of New Substances Regulations 1982 (SI 1982/1946) regulation 10
- Offshore Installations (Inspectors and Casualties) Regulations 1973
(SI 1973/1842) regulations 6 and 7
- Package Travel, Package Holidays and Package Tour Regulations 1992
(SI 1992/3288) Schedule 3(7)
- Personal Protective Equipment (EC Directive) Regulations 1992
(SI 1992/3139) regulation 3

Petroleum Production (Landward Areas) Regulations 1984 (SI 1984/1832)
Schedules 4 (26) and 5 (28)

Petroleum Production (Seaward Areas) Regulations 1988 (SI 1988/1213)
Schedules 4 (34) and 5(15)

Placement of Children with Parents etc Regulations 1991 (SI 1991/893) Schedule 2

Police (Discipline) Regulations 1985 (SI 1985/518) Schedule 1(6)

Premium Savings Bonds Regulations 1972 (SI 1972/765) regulation 30

Prison (Scotland) Rules 1952 (SI 1952/585) rule 184

Public Health (Infectious Diseases) Regulations 1988 (SI 1988/1546) regulation 12

Public Supply Contract Regulations 1991 (SI 1991/2679) regulation 18

Roll-over Protective Structures for Construction Plant (EEC Requirement)
Regulations 1988 (SI 1988/363) regulation 4

Savings Contracts Regulations 1969 (SI 1969/1342) regulation 26

Savings Certificates (Yearly Plan) Regulations 1984 (SI 1984/779) regulation 31

Savings Certificates (Children's Bonus Bonds) Regulations 1991
(SI 1991/1407) regulation 28

Savings Certificates Regulations 1991 (SI 1991/1031) regulation 31

Self-Propelled Industrial Trucks (EEC Requirements) Regulations 1988
(SI 1988/1736) regulation 4

Supply of Machinery (Safety) Regulations 1992 (SI 1992/3073) Schedule 6(1-3)

Simple Pressure Vessels (Safety) Regulations 1991 (SI 1991/2749) Schedule 5(1-3)

Taximeters (EEC Requirements) Regulations 1979 (SI 1979/1379) regulation 15

Telecommunications Terminal Equipment Regulations 1992 (SI 1992/2423) regulation 85

Uncertificated Securities Regulations 1992 (SI 1992/225) regulation 113

PART II: STATUTORY PROVISIONS CONTAINING DISCRETION TO DISCLOSE OFFICIAL INFORMATION

PRIMARY LEGISLATION

Air Force Act 1955, sections 94 and 141
Airports Act 1986, section 30
Armed Forces Act 1976, Schedule 3
Army Act 1955, sections 94 and 141
Atomic Energy Act 1946, section 12
Atomic Energy Authority Act 1954, section 3

British Nationality Act 1948, section 26
British Nationality (Hong Kong) Act 1990, section 1
British Nationality Act 1981, section 44
Broadcasting Act 1990, section 146

Channel Tunnel Act 1987, section 11
Children and Young Persons Act 1933, sections 39 and 49
Children and Young Persons Act (NI) 1968, sections 59 and 68
Contempt of Court Act 1981, section 11
Control of Pollution Act 1974, sections 42 and 81

Education Act 1981, Schedule 1(4)
Electricity Act 1989, sections 13, 14, 42, 48, 50, 52, 58 and 96
Electricity (NI) Order 1992, articles 45 and 53
Environmental Protection Act 1990, section 142

Fair Trading Act 1973, sections 82 and 83
Financial Services Act 1986, sections 165 and 181
Food and Environment Protection Act 1985, section 16

Gas Act 1986, sections 33C, 35, 39 and 41

Immigration Act 1971, section 22
Insurance Companies Act 1982, sections 23, 60 and 61
Interception of Communications Act 1985, sections 6, 8 and 9

Lloyds Act 1982, Schedule 2(25)
Local Government (Scotland) Act 1975, section 28
Local Government (NI) Act 1972, section 77A

Naval Discipline Act 1957, section 66
Nuclear Installation Act 1965 (as amended) Schedule 1(5)

Offshore and Pipelines Safety (NI) Order 1992, article 7
Offshore Safety Act 1992, section 5

Parliamentary Commissioner Act 1967, section 11
Patents Act 1977, sections 16 and 22
Planning (Hazardous Substances) Act 1990, Schedule (6)
Policyholders Protection Act 1975, section 28
Public Records Act 1958, section 5 (as amended)

Radioactive Substances Act 1993, section 25
Registered Designs Act 1949, sections 5 and 22

Security Service Act 1989, Schedule 2
Sexual Offences (Amendment) Act 1976, section 4 (as amended)
Sexual Offences (Amendment) Act 1992, section 5

Telecommunications Act 1984, section 27C, 48, 55 and 94
Town and Country Planning Act 1990, section 321

Water Industry Act 1991, sections 15, 38A, 95A, 193, 194, 201 and 208
Water Resources Act 1991, section 207
Weights and Measures Act 1985, section 71

SECONDARY LEGISLATION

Act of Sederunt, Adoption of Children (SI 1984/1013) rule 28
Agricultural Land Tribunals (Rules) Order 1978 (SI 1978/259) rule 20

British Citizenship (Deprivation) Rules 1982 (SI 1982/988) rule 8
British Dependent Territories Citizenship (Deprivation) Rules 1982 (SI 1982/989) rule 8

Children's Hearings (Scotland) Rules 1986 (SI 1986/2291) rule 19
Consumer Credit Licensing (Appeals) Regulations 1976 (SI 1976/837) regulation 22
County Courts Rules (NI) 1981 (SR 1981/225) (as amended) rule 32

Education (Record of Needs) (Scotland) Regulations 1982 (SI 1982/1222) regulation 7
Electricity (Compulsory Wayleaves) (Hearings Procedure) Rules 1967 (SI 1967/450) rule 7
Electricity Generating Stations and Overhead Lines (Inquiries Procedure)

Rules 1990 (SI 1990/528) rule 14

Environmental Assessment (Salmon Farming in Marine Waters) Regulations 1988
(SI 1988/1218) regulation 6

Estate Agents (Appeals) Regulations 1981 (SI 1981/1518) regulation 22

Genetically Modified Organisms (Contained Use) Regulations 1992
(SI 1992/3217) regulation 15

Industrial Tribunals (Rules of Procedure) Regulations 1985 (SI 1985/16) Schedule 1(7)
Industrial Tribunals (Rules of Procedure) Regulations (NI) 1981 Schedule (7)
Industrial Tribunals (Rules of Procedure) (Scotland) Regulations 1985
(SI 1985/17) Schedule 1(7)

Land Drainage Improvement Works (Assessment of Environmental Effects)
Regulations 1988 (SI 1988/1217) regulation 7

Magistrates' Courts (Adoption) Rules 1984 (SI 1984/611) rule 5
Matrimonial Causes Rules (NI) 1981 (SR 1981/184) rule 135
Mental Health Review Tribunal Rules 1983 (SI 1983/942) rules 6 and 12

Notification of New Substances Regulations 1982 (SI 1982/1946) regulation 10

Pensions Appeal Tribunals (NI) Rules 1981 (SR 1981/231) rules 6 and 22
Public Works Contract Regulations 1991 (SI 1991/2680) regulation 21

Rules of Supreme Court (Northern Ireland) 1980 (SR 1989/343) (as amended) rule 53

Social Security Commissioners Procedure Regulations (NI) 1987
(SR 1987/112) regulations 14 and 17

ANNEX C

GUIDELINES ON EXTENDED CLOSURE

GUIDING PRINCIPLE: All records not retained in departments should be released after 30 years unless a) it is possible to establish the actual damage that would be caused by release, and b) the damage falls within the three criteria set out below.

CRITERION (as stated in the 1993 White Paper Cm 2290)	NATURE OF RECORD	CLOSURE PERIOD
Exceptionally sensitive records containing information the disclosure of which would not be in the public interest in that it would harm defence, international relations, national security including the maintenance of law and order, or the economic interests of the UK and its overseas territories.	All records meeting this criterion, including those concerned with national security and those containing information the premature disclosure of which would impede the conduct of the policy of HM Government abroad.	40 years
Documents containing information supplied in confidence the disclosure of which would constitute a breach of good faith.	Most records meeting this criterion, including commercial and personal information supplied in confidence.	40 years, or until death where known (where appropriate)
	Tax Information	75 years
	Personal information subject to a statutory bar during the lifetime of the person concerned.	75 years, or until death where known
	Records of the decennial census of population	100 years
Documents containing information about individuals the disclosure of which would cause either: (i) substantial distress, or (ii) endangerment from a third party, to persons affected by disclosure or their descendants.	Records meeting this criterion and containing sensitive personal information which would substantially distress or endanger a living person or his or her descendants.	40-100 years
	Records containing information from which it is likely that a woman could be identified as a rape victim.	100 years

ANNEX D

RELEASE OF PUBLIC RECORDS

As announced by the Chancellor of the Duchy of Lancaster on 25 June 1992 the records of the Joint Intelligence Committee (JIC) are now being reviewed and released on the same basis as other public records. Work to review and release JIC records which have previously been withheld under the security and intelligence 'blanket' is under way. JIC records for 1939-41 were released in January 1993. All JIC records which have been cleared for release, from its inception in 1936, to 1941, are now in the Public Record Office (PRO). It is hoped that the remainder of the wartime JIC papers (1942-45) which are deemed to be releasable will be made available in the PRO in January 1994. Work will continue to review the JIC papers for later years for release.

The Foreign Secretary announced in November 1992 that the Special Operations Executive (SOE) archive would be reviewed for release. The first batch of records is being released this year.

Wartime Cabinet records previously withheld are being reviewed *en bloc*. Those which are found to have lost the sensitivity which caused them to be withheld will be released as soon as possible.

The Government Communications Headquarters (GCHQ) is reviewing and preparing for release the wartime daily selection of decrypts for the Prime Minister (Churchill). These papers, which were inherited by GCHQ from the Government Code and Cypher School (GC & CS) were used by the Official Historians in writing *British Intelligence in the Second World War* where they are referred to as the 'Dir/C Archive'. Once this process has been completed, later this year or early in 1994, GCHQ will be reviewing other wartime and earlier papers.

Court martial records, previously automatically withheld for 75 years, will now be re-reviewed. Only those which contain personal or other sensitive material will continue to be withheld for longer than 30 years.

In addition to papers released as a result of individual requests:

over 400 records have been released by the Foreign and Commonwealth Office including:

1961-62 papers on the Belgian Congo
1962 papers on Germany, Iran, Iraq, Central America and the Cuban Missile Crisis.

One of the two wartime papers on Rudolf Hess withheld from the 1992 bulk releases (FCO papers currently under review include those relating to the early years of NATO and of the Russia Committee (1946 to the mid 1950s))

19th Century administrative material inherited by the Secret Intelligence Service (SIS) from its predecessor is planned for release on 15 July 1993.

Previously withheld papers relating to the Suez crisis have been re-reviewed and released by the Cabinet Office, No 10 Downing Street, the Ministry of Defence and HM Treasury.

The Ministry of Defence have reviewed and cleared for release:

In the Admiralty Class, Register of reports of deaths 1919-41
ADM 104 /126; Admiralty papers and cases ADM 178;

In the AVIA class consideration of intelligence reports on Enemy aircraft 1940-43; Enemy aircraft: intelligence reports 1941-46;
Enemy jet propulsion projects technical information 1944, AVIA 15/576, 1169, 1170, 2121, 2122;

In the DEFE class Defence Research Policy and Defence Research Policy Committee volumes, DEFE 10, Joint Intelligence Bureau: Directorate of Scientific Intelligence: Director's (R V Jones) papers DEFE 40;

In the WO class 1944 interrogation of German POWs WO 204, notes on Alawite and Drozes tribes, WO 208/3092-3, CSDIC WO 208/3248, two previously withheld escape reports WO 208/3305, 3327.

In addition to the papers relating to the Suez crisis, mentioned above, the Prime Minister's Office has released other material in the PREM 3 class and is reviewing material requested from PREM 8 and PREM 11 on relations with the USSR and on Berlin.

The Home Office, in addition to releasing records relating to the Occupation of the Channel Islands, Shingle Street, Derek Bentley, Christie/Evans, Dr Crippen, and to other individual requests, is reviewing other records in HO 45 on, eg Renegades, and HO 144 including those relating to Roger Casement.

HM Treasury have released files containing NATO-related material in classes T225 and 234 and are reviewing Treasury Historical Memoranda with a view to release.

Other records requested following the Chancellor of the Duchy's invitation to historians to notify him of blocks of records they wish to see released are being reviewed. The results of the review will be announced in due course.



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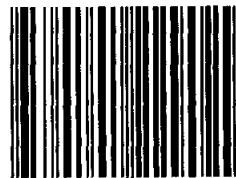
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